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ABSTRACT

The papers in this compendium were delivered at two conferences on sex discrimination in education held during a two-year period. Much of the emphasis was on the implementation of Title IX, which was aimed at eliminating sex discrimination from the educational systems across the country. Topics dealt with include: requirements, benefits, and strategies for implemeting Title Nine; anti-sexist counseling in the public schools; development of nonsexist curricula; employment practices; and observations on sex role training with groups. One paper describes a typical grievance system for investigating a Title Nine complaint within a school system. (Author/BP)

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# Sex Equality & Title IX

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Program for Educational Opportunity
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SEX EQUALITY AND TITLE IX

Conference Papers

# SEX EQUALITY AND TITLE IX

Conference Papers

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Program for Educational Opportunity
The University of Michigan, Ann Arbor
1977

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## PREFACE

The Program for Educational Opportunity is a university-based institute designed to assist school districts in the process of desegregation based on race, national origin, and sex. The Program, based at The University of Michigan, was established by the U.S. Office of Education pursuant to Title IV of the 1964 Civil Rights Act.

Besides providing in-district services on request and without charge to public schools in Michigan, the Program annually conducts a series of conferences.

Several conferences were held during 1976 and 1977 covering topics of critical importance to school board members, administrators, teachers, students, and community. Two conferences on sex discrimination in education were held during these two years. The papers from these conferences have been combined into this volume.

To the consultants from professional associations, governmental agencies, university communities, and practicing educators and attorneys, the Program expresses its appreciation for their sharing of experience and dedication to the proposition of equal educational opportunity.

Special appreciation is due Wilbur J. Cohen, Dean of the School of Education, for his continuing interest and support of the Program.

Finally, contributions of the individuals responsible for the planning and coordinating of the conferences and these proceedings are acknowledged.

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# INTRODUCTION

Vivian B. Shaner*

On July 21, 1975, the legislation which has become known as Title IX became effective. Aimed at eliminating sex discrimination from the educational systems across the country, Title IX gave rise to a more concentrated effort in this direction. Until this time there had been no federal law which specifically addressed the issue of sex discrimination in the nation's schools and colleges. The impact of Title IX is just beginning to be felt by the public at large. Its broad coverage has the potential to effect profound changes in the ways educational institutions treat children and adults based on sex.

During the Winters of 1976 and 1977, the Program for Educational Opportunity sponsored two conferences on sex discrimination in education. This volume contains many of the papers presented at these conferences.

In her paper entitled "The Quest for Equal Educational Opportunity: Requirements, Benefits, and Strategies to Implement Title IX," Elena B. Wong, points out some of the reasons legislators and others were persuaded that a law banning sex discrimination in educational institutions was needed. Sex discrimination and the process of stereotyping males and females based on preconceived roles are apparently responsible for the inequitable status of those involved in learning and working in educational institutions.

Mary Ellen Verheyden-Hilliard presents a clear picture of the effects of sex role stereotyping on girls and women in our society. Her paper, "The Myth, the Reality, and Title IX," zeroes in on what the educators' responsibilities are in bringing about equal educational opportunity for boys and girls. As Ms. Verheyden-Hilliard points out, every facet of school life needs to be challenged in order to ensure equity for males and females. Nancy Schave, in her paper on counseling, joins Lea Schelke, who discusses non sexist curricula, and Florence Beier who looks at one district's efforts to comply with Title IX, in emphasizing that a thorough examination of policies and practices within a school district is a key step in eliminating sex discrimination. It is also, of course, a major requirement under Title IX.

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Training people to understand sex role stereotyping and its effects is necessary in order to lay a foundation for modifying practices and policies which result in sex discrimination. Gail Resnik writes about the experiences of one such trainer in her paper entitled, "The Traveling Sex Role Roadshow: Observations of Sex Role Training with Groups." This is especially helpful for those who might conduct this type of inservice.

Motivating school systems to evaluate and modify practices and policies which result in discrimination against students on the basis of sex is but half of the thrust of Title IX. As explained by John R. Runyan, Jr. as he writes about employment practices and Title IX, discrimination on the basis of sex in the employment arena is prohibited both by Title IX and Title VII of the 1964 Civil Rights Act. In discussing the concept of discrimination as well as case law relating to employment discrimination, Mr. Runyan provides a clear picture of the similarities and differences between Title VII and Title IX.

The entire issue of sex discrimination in employment is one which seems to follow the pattern which exists in sectors other than educational institutions. That is, the higher one looks in the organizational ladder of any system, the fewer women one can expect to find at or near the top. Barbara A. Sizemore, eloquent spokeswoman on this issue, illustrates this problem in her paper entitled, "Sexism and the Woman Administrator." In describing her own experience as well as those of other women, Ms. Sizemore demonstrates the processes which result in the declining percentage of women in school administration.

Under the new legislation prohibiting sex discrimination in education is a component which can assist aggrieved persons in their quest for equity. A grievance procedure for students and staff must be instituted by the school system according to the Title IX regulations. It is also possible to file a complaint with the Office for Civil Rights in order to resolve a grievance. In her paper, "Conducting an In-House Investigation of a Title IX Complaint," Ruth Moorman provides a clear illustration of this process with a given school system. It should be noted that using this procedure is one acceptable way of clarifying issues and bringing an institution into compliance with Title IX.

The emergence of Title IX has been a motivating factor in the efforts to reduce sex discrimination in schools and colleges. With the assistance of other federal and state laws, equity may become a reality. It is hoped that these conference papers will assist educators in better understanding the need for this ongoing process.

# I. IMPLEMENTING TITLE IX

# THE QUEST FOR EQUAL EDUCATIONAL OPPORTUNITY: REQUIREMENTS, BENEFITS AND STRATEGIES TO IMPLEMENT TITLE IX

Elena B. Wong*

The views expressed herein are those of the author and do not necessarily represent the opinions of the California State Department of Education nor the Bureau of Intergroup Relations.

This new year, 1977, following the nation's bicentennial brings forth a time for renewal and reflection on American beliefs--(1) self-determination, (2) free speech in a democratic society, (3) and the right for equal educational opportunity.

> No person in the U.S. shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any educational program or activity receiving Federal financial assistance... (20 U.S.C., Sections 1681 et. seq.)

Federally funded education programs and activities include:

- -Admissions to educational institutions
- -Treatment of students
  - -Access to and participation in course offerings, extracurricular activities
  - -Eligibility for and receipt or enjoyment of benefits, services and financial aid
  - -Use of facilities, housing
  - -Physical education, athletics

Administrative requirements of Title IX:

1) Adopt a policy of nondiscrimination
2) Disseminate the policy
3) Adopt and publish grievance procedures
4) Designate at least one employee to coordinate compliance
5) Conduct a self-evaluation
6) Modify policies and practices not in compliance
7) Take remedial steps to eliminate effects of past discrimination
8) Maintain file for three years of modifications and remedial steps

*Elena B. Wong is with the Bureau of Intergroup Relations, State Department of Education, California.

Though Title IX has been law since 1972, we must recognize that its current effectiveness is traced to a growing awareness of the fundamental fairness and need for sex equality, an increasing commitment within school districts to make required changes in their educational programs, as well as strong support from agencies, institutions and community groups, dedicated to educational and individual equality. As you know, laws and legislative acts only help define parameters of acceptable conduct and enable people to calculate the legal consequences of that conduct. Laws also represent historical continuity and consistency of doctrine. The Title IX assurance form recently issued by the Office of Civil Rights, HEW, will mandate school districts to affirm that they are in compliance with Title IX, or to at least indicate progress made to date and specify dates on which full compliance will be reached. The ultimate threat of withdrawal of federal funds looms large to many school districts whose compliance with Title IX requirements are incompleted, unplanned, and perhaps, even unpopular in some quarters.

However, another and yet more prevalent perspective needs to be considered. School districts will comply with Title IX, not only because it is the law, but morally, because it is economically, socially and politically right. Title IX needs to be viewed as just one more step in protecting the civil rights of all people. The concept of providing each child, each student, with the opportunity to develop his/her fullest cognitive, affective and psychomotor potentials has long been an accepted goal in American education. Title IX provides a fuller amplification long needed to give credence to this concept for a large percentage of our students.

The effectiveness of providing equal educational opportunity will depend upon the extent of the self-examination we are willing to make, looking at past cultural conditions, life styles, and social stratification goals that have caused us to be covertly and overtly sex biased in the behaviors we exhibit in our interpersonal and intergroup relationships. We will also have to decide what we are willing to risk to change such circumstances.

## Socialization Processes

Let me pose two questions:

1. Is it discrimination when 57 percent of the entering male freshmen have had four years of math to qualify as prerequisites to enter the University of California science and math fields while only 8 percent of the female

freshmen have this prerequisite? (Lucy Sells, Sociological Study, 1973)

2. Is it fair to have dual standards for leadership? In the California Psychological Inventory, feminine leaders are: Appreciative, patient, helpful, gentle, moderate, persevering, and sincere; as being respectful and accepting of others; and as behaving in a conscientious and sympathetic way. Masculine leaders are: Outgoing, hard-headed, ambitious, masculine, active, robust, and restless; as being manipulative and opportunistic in dealing with others; blunt and direct in thinking and action; and impatient with delay, indecision, and reflection.

It begins with words and images. While legislative proposals are part of the change process, we must examine early socialization and the influence of role models to understand the sensitivity of young people to the "societal curriculum" that surrounds them every day of their lives.

The Task Force on Educational Media reports there are 112 million television sets in America's 63.8 million homes. Ninety percent of all homes have one or more sets. The average set is turned on 6 hours and 49 minutes a day (2,400 hours per year). By the time a student graduates from high school he/she will have spent 11,000 hours in the classroom and 15,000 hours in front of the television.

The Task Force cites studies indicating that television in conveying "supposed truths about people, power, issues and behavior," continues to present women and men in traditional roles. "Women are not portrayed as autonomous, independent human beings." Children see more men than women on their television screens. On the exciting adventure shows, they see nearly six times as many men. The men they see work in diverse occupations nearly twice as often as women characters. They see three-quarters of the adult males in shows about family support, and only one-third of the adult females helping with the support. The prime-time message of the television screen is that there are more men around, and that they are dominant, authoritative and competent. Women on television are twice as likely to display incompetent behavior as men.

Seventy-two percent of the leading characters in drama series are men, 93 percent (of 3,000 commercials) of the voice-overs giving the authoritative word on the product are men, and 60 percent of the male characters in children's cartoons are instigators of the action compared to 5 percent of the female characters.

The Task Force recommends that parents use the monitor teaching form developed in the "Report of the Task Force on Women in Public Broadcasting" by Carolyn Isber and Muriel Kantor. Reprints are available from the Publicity Department, Corporation for Public Braodcasting, (202) 293-6160.

The Task Force on Sex Bias and Instructional Materials reports similar numerical disparities. In studies of 134 elementary school readers from 16 different publishers, the following ratios were found:

Boy-centered stories to girl-centered stories.....5:2
Adult male main characters to adult female main characters.....3:1
Male biographies to female biographies.....6:1
Male folk or fantasy stories to female folk or fantasy stories.....4:1
Male animal stories to female animal stories.....2:1

An analysis of illustrations in the content fields of science, mathematics, reading, spelling, and social studies (between 1968 and 1972) revealed that females comprised only 31 percent of the textbook total. As grade level increases and texts become more complex and sophisticated, women are less frequently represented. Minority women suffer particular exclusion, for they are pictured only half as many times as are minority males. The pattern of the "invisible women" continues in trade books.

Curricula materials. A team from Women on Words and Images (WOWI) in Princeton, New Jersey, looked at many of the materials and found five times as many occupations for males as for females at the elementary and secondary school levels. In addition, 68 percent of the 9,456 illustrations counted showed males only. In audio materials, males were the main narrators in 37, females in one. Male and female teams narrated three.

Language. The National Institute of Education (NIE) has published Guidelines for Assessment of Sex Bias and Sex Fairness in Career Guidance Materials. These guidelines examined the sex bias of items in interest inventories and identified two types that can occur:

-Items can be sex biased in the language used in their construction.
-Separate items can be designed for both sexes. (Strong Vocational Interest Inventory)

Guideline 1: Use of the generic "He" and "She" should be eliminated through the inventory.
Example: "Do you like to watch a fireman and

his ladder company fight fires?" contains two faults which could be eliminated by rewriting the question as, "Do you like to watch firefighters at work?"

Guideline 2: Occupational titles used in the inventory should be presented in gender-neutral terms or both male and female titles should be presented. Example: "Spend a day observing a mailman," should read, "Spend a day observing a letter carrier." "Conduct an interview with a famous actor," should read, "Conduct an interview with a famous actor or actress."

## The Hazards of Being Male

The belief that Title IX benefits women and females only is untrue. You need to look at the benefits for men. I call your attention to a new book put out by Dr. Herb Goldberg called The Hazards of Being Male (Nash Publications, 1976). Goldberg points out that the consideration of men as the "privileged sex" needs to be re-examined. Our society does not allow men to be emotionally expressive. The masculine role model is a very "macho" one, and those who fall short of this "superman" image are often considered failures. In support of this, Goldberg found that being dependent and being feminine were the two characteristics most threatening to men. U.S. Census figures support the contention that men are not so privileged after all. At nearly every age level, the male mortality is significantly higher, and male suicide attempts are more successful.

## Face-to-Face Communications--Assertiveness Training

With progress in obtaining equal opportunities for male and female students, face-to-face confrontations and conflict can be expected to occur. To guide young people to be honest, open, direct and yet accepting of others will be indeed a challenge for educators. Serious consideration should be given to reviewing interpersonal and intergroup relationships to observe manipulative behavior, intimidation, criticism, guilt. (Some systematic assertive skills in how to handle conflict and cope effectively with living can be found in Dr. Manuel J. Smith's book, When I Say No, I Feel Guilty).

In closing, let me voice a plea. If learning can be defined as living, then the five functions of learning to me are: concern, dignity, choice, participation, and inquiry.

We as educators, have the basic responsibility to reach, touch, and teach these functions. We also have the responsibility to help learners cope and

not grope. To more effectively and efficiently translate legal mandate, Title IX, into programs, we must reprioritize needs and reallocate financial and human resources.

Together as board members, administrators, staff and community, we can and will harness the necessary cooperative energy needed to make Title IX an instrumentality to truly provide equal opportunity for all.

READINGS, TRAINING MATERIALS AND RESOURCES
ON TITLE IX

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# THE MYTH, THE REALITY, AND TITLE IX

Mary Ellen Verheyden-Hilliard*

Americans have a powerful, nearly universal belief which undercuts and overlaps any girl's life plan. The belief is sometimes expressed overtly in the culture and is always present subliminally. It is a belief that every American girl is, or should be, named Cinderella. It is what I have taken to writing about as the "Cinderella Syndrome" and it goes like this: When Cinderella leaves school at whatever level, she will be discovered by the Prince and married to him. She will then be so occupied with the Prince, the princesses and the princes that she will never need to work or want to work again. She and the Prince will live happily ever after until they are both 100 years old, at which time they will both die on the same day.

That is the myth. The reality is that 54 percent of American women between the ages of 18 and 64 are in the work force. Almost 5 million women with pre-school children work. The divorce rate is up 109 percent since 1962 and rising, and child support by the father in divided families is nearly non-existent. This is true whether the family has substantial or little financial means. Women live longer than men and grow old to be poor, with two thirds of all poor over the age of 65 being women.

These are persuasive statistics. They are important because unless you, as educators and perhaps parents, have a crystal ball that works with a high degree of accuracy, you cannot know which of your students, or your children, will not become one of the statistics.

The statistics for working women in the United States are not good, and we need to understand some of the "whys" that we may be able to change. Presently the majority of working women are in two fields, clerical and service work. Service work in this instance means jobs such as beautician and waitress. Of the tiny percentage of women who are in professional fields, the majority are elementary and secondary school teachers. These careers are not on a career ladder in the sense usually applied to male careers. The secretary does not become boss; the waitress does not end up owning the restaurant; and the teacher does not become superintendent. Less

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than one percent of the superintendents in the schools of America are women.

Ten years ago, Dr. Alice Rossi noted that the childhood model of the "good sweet girl" which the educational system encouraged was not going to produce any women scientists, scholars, doctors or engineers. Twelve years ago, Dr. Eleanor Maccoby reported that the Fels longitudinal study of gifted girls and boys revealed that the simplest predictor of whether or not a girl would grow into an intellectual person was whether or not she had been a "tomboy" at some point in her childhood. The Fels study also reported that the children whose I.Q.'s rose during elementary school were the children who were competitive, self-assertive, independent and dominant in interaction with other children. The children whose I.Q.'s declined during the same time were passive, shy and dependent.

It does not take a great deal of scholarly thought and research to figure out which list of adjectives reflects the historical and current view of the accepted female role in school and elsewhere.

Little girls learn early what is expected of them and by age nine define their future careers as secretary, nurse, teacher, and mother. At the same time boys are dreaming widely and hoping to be astronauts, deep sea divers, presidents and doctors.

The cognitive corollary to this may, perhaps, be seen in the report of the Education Commission of the States' National Assessment of Educational Progress. The assessment reported that girls do just as well as boys and boys do just as well as girls up until about age nine. Somewhere between 9 and 13 a decline in math, science and social studies begins for girls which continues through the late teen years and into young adulthood.

Research has told us over and over again that female underachievement begins as puberty approaches. And unless one is really prepared to believe that all female brains turn to butter as the hormonal count increases, then we have to look at what else is going on. And what is going on as girls approach puberty is that the socialization process to the expected Cinderella role shifts to pressure cooker intensity.

At puberty, adult roles are being studied and adapted to. The adult role which the girl begins to practice is that of the dependent wife, seeking status through her husband. In far too many of our high schools the girl with the most status is not the one who is independent and achieving as an athlete or as a scholar. The high school girl is encouraged to define her self-worth by which boy with how much status finds her worthy of his attention.

The career she tries on is that of the wife at home as she waits passively by the phone for a call from a male that will tell her that she is "all right."

We talk of adolescence as a time of asserting independence and finding one's own values, but this does not really apply to girls. Girls at adolescence trade in dependence on their parents for dependence on their male friends and eventually they will trade that in for dependence on a husband.

If the adolescent girl has a different vision and is thinking of a non-traditional career, she may find herself in difficulty with the person who is supposed to help her move ahead. Studies have shown that young women expressing interest in engineering as a career were seen by both male and female counselors as "deviant" and in need of further counseling--not because she would need help to achieve her goal but because something was seen to be "deviant" about her and her goal.

And that is where Title IX enters the picture. Heretofore schools have forced certain kinds of people out of one kind of course because of their sex, or forced them into another kind of course because of their sex. We have counseled certain students to do certain kinds of jobs perhaps based on nothing more than where we felt those students, as adults, should be at 3:00 p.m.: i.e., at home to take care of their children. We have pretended that certain kinds of students should not work audio visual equipment and should only hit softballs not baseballs. We have said that certain sports were too dangerous for certain kinds of students to play while continuing to allow certain other kinds of students to engage in the sport even though they died as young teenagers while playing it.

Title IX is feared by some people because, they say, it "forces" students into classes and activities. I would like to suggest just the opposite. Title IX is saying that we CANNOT force people into any more educational molds or stereotypes based on our personal belief concerning what is appropriate for a girl or a boy, a woman or a man to achieve and to be.

Compliance with Title IX is really very easy--unless you are trying to get around it. To comply with it requires encouraging and providing equal opportunity for all your students based on their interests and abilities and not on any preconceived notions of what certain people should be doing based on sex role stereotypes.

Of course, it is always more comfortable to insist that the difficulty in achieving sex equality is the bias of everyone else--our colleagues, our students, their parents. But that is really not very reasonable.

The school system has children in its buildings and under its jurisdiction six hours a day, five days a week, nine months a year for at least the 10 years children must spend in the obligatory school system of our country. If we really felt so helpless, and if we were supposed to feel so helpless, I do believe we would have closed down the public school system long since. I do not think that is going to happen any time soon and I do not really believe anybody else believes it is going to happen any time soon either.

The question then becomes: What is our responsibility to all our students to see that they go as far and as high as their abilities and interests will take them? Our responsibility, I believe, is to do more than just not discriminate. I think we must take an affirmative stance and offer to all our students, the girls and the boys, our active support, our strong encouragement and our carefully un-sex-biased assistance to help them be all they can be.

## ANTI-SEXIST COUNSELING IN THE PUBLIC SCHOOLS

Nancy Schave*

Probably the most maligned department of the public schools on the question of sex-role stereotyping has been that of counseling. As a counselor I have to state that the reputation is deserved. Counselors can do much to reinforce sexism, and they can do much to eradicate it. As with other areas within the schools, and within society, they have done much to reinforce it.

Within any program that proposes eradication of sexism, the concept of "non-sexist..." is usually involved. Examples are "non-sexist counseling," "non-sexist advertising," "non-sexist curriculum." When we are working with schools, this concept is completely inadequate. Counselors and schools must first be "anti-sexist." Perhaps someday, we can reach the point where we can be non-sexist, but today we must be anti-sexist. The total exposure for students has been sexist. All, or nearly all, media and advertising is biased. All of the curriculum and teaching in the elementary grades has been sex biased. If we are to get students to think beyond these biases, we must develop anti-sexism programs. Non-sexist programs will have little or no effect.

To further develop this concept, an illustration: If we rewrote curriculum guides so that they were without bias, but did nothing to encourage girls to take shop courses, and boys to take home economics courses, probably other forces in the environment would be strong enough to ensure that at least 90 percent of the students would make the predictable choices. On the other hand, having "career days" with speakers who are not sex-role typical (along with some who are), creating bulletin boards which portray people in non-typical jobs, and carrying out other clearly anti-sexist projects and programs, helps students to rethink their biases and make decisions without being influenced by stereotypes.

### Testing

There is entirely too much testing done in most public schools. The criterion to use in judging how much is too much is quite obvious: Is it used? If you can say that at least 50 percent of the students

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who took a standardized test at a particular grade level will be reviewing those tests, and making decisions based upon those results, then the test is justified. If that is not the case, the cost is not justified. Most schools have access to individualized testing for those cases where there may be questions concerning abilities in about five of every 100 students. Individualized tests are much more reliable. We cannot continue to test all students in order to answer questions regarding the ability of a few.

There are two areas with which you need to be concerned in evaluating tests. One is the normative group. Any test which identifies the sex of a child should be suspect. Within the last few years, a study was carried through on the Strong Vocational Interest Test. The Strong was normed by sex. A girl and a boy who held the same scores would be told to explore the occupations of nurse and doctor, respectively. The OVIS (Interest Inventory) norms by sex. This is the manner in which it is misleading: As we have told girls from an early age not to be interested in mechanics, when one girl has a slight interest in it and is compared only with girls, the percentile will be skewed in such a way as to indicate to her that she is highly interested in mechanics. Were she to be compared with both boys and girls, she might find that mechanics was a third or fourth choice. Interests which are strong enough to be career interests rather than "hobby" interests will show up for both boys and girls when normed in the same group. When you are unable to find an interest test which is not normed by sex, and you feel you must have an interest test, I would suggest norming all students as boys. While this is not a total solution, it is better than the present system. Using boys is better than girls because girls tend to group in about 10 different jobs, while boys tend to include the other 240,000 jobs available in the United States.

The ACT Corporation has recently begun an interest survey as part of their college acceptance testing program. This testing is normed by sex. It would be extremely difficult for a student to lie about their sex on this test because of the requirement of proof of identification. Hence, the only possible solution here is that a student refuse to take the interest portion of the test. The ACT Corporation has received complaints, and undoubtedly will continue to receive them. A report in which you may be interested is entitled Progress Report 1975: Overview of Research on the Viability of Sex-Restrictive Reports of Career Interests. This report is their justification for continuing to carry on sex-biased interest testing. While in many cases, this interest survey

may not be used, the few cases where an admissions officer, down to choosing the last few, may use this for a guide for choosing which student to admit and which student to deny admission, are enough reason for students not to take this portion of the test.

The above mentioned tests should be indicative of what may happen with norming by sex. The other area which needs investigation is the sex-bias found in individual test items. Each test needs to be read through thoroughly and checked for biases in race, sex, urban/rural and ethnic backgrounds before a school accepts it for use. One of the most misused pieces of knowledge of recent years has been that research which has shown that blacks score lower on IQ tests than whites. A person unknowledgable in testing can quickly conclude that on the average, black people tend to be dumber than white people. A testing expert has to wonder if the test(s) is based on knowledge usually acquired by white middle-class students. One wonders how whites might score on tests composed by blacks, who had lived in a black neighborhood all of their lives. Or perhaps we should all be tested by a bilingual testing expert who has experienced all of the homes in his neighborhood as bilingual and urban. Perhaps if we had a farmer write the tests....

The Strong (Vocational Interest Test) has been administered in two different versions: One for girls, one for boys. Boys could choose between: "develop the theory of operation of a new machine" or "supervise the manufacture of a machine," and "travel to outer space" or "explore the bottom of the ocean." Girls could choose between "be married to a rancher" or "be married to a corporation president." While this example is blatantly obvious, some are more subtle. But if we just reverse some, we get a real laugh if we consider asking a boy if he prefers "furnishing and caring for a home" or choosing whether he prefers magazines about fashion or interior decorating.

Some unpublished research has recently questioned the fairness of the IOWA Test of Basic Skills. So far there is concern over its bias in favor of Western (U.S.) thought over Eastern, Southern, or Midwestern, over sex-bias, and over an urban/rural bias.

If story problems in the math test show boys figuring all the complex things, e.g., how fast a spaceship is traveling when it uses so much fuel per second, while girls figure how many square yards of material it takes to make a bean bag chair, the very girls who are interested in creative and exploratory endeavors are likely to turn off and not do their best. How long, on the other hand, do you think a boy's

attention would be kept if the bias were turned the other way?

Career Education

Do the programs implemented under these auspices reflect the same tired old stereotypes? Is every doctor, lawyer, engineer, and firefighter a man? Is every nurse, secretary, teacher and homemaker a woman?

In all levels of students' exploration, we must make them aware that both women and men can climb telephone poles, type, fight crime, and treat diseases.

The U.S. Department of Labor lists 250,000 different jobs available in the United States. Of these, girls tend to think about 10 which are suitable for them. Considering that over 60 percent of women of working age are employed today, and that 9 out of 10 women who graduate from high school this spring will work at some time in their lives, the conclusion is that there are 10 overcrowded fields. We must cause girls to explore those 249,990 fields.

At all levels of school, bulletin boards must be made showing women authors, artists, university professors, school administrators, mechanics and bookkeepers. When outside workers come to school to talk about their jobs, at least half of them should be non-sex-role typical. It is simply not that hard to find a female police officer, telephone installer or truck driver. They do exist! If in doubt, call your local telephone company, etc. Pictures for such bulletin boards appear in newspapers regularly. About 2-3 months of collecting can result in a very nice bulletin board. One which I made was entitled "That's Woman's Work!"

Immediate attempts can be made to expand the library so that girls can read about girl detectives, athletes and newspaper reporters. They can also read autobiographies by Margaret Mead and Elizabeth Cady Stanton.

At the same time all career pamphlets, whether in the library or the guidance office, need to be reviewed. The best of these materials have graphics which reflect no gender whatsoever. Next best are those which portray both. In the case of materials which illustrate only the stereotypical gender, I suggest not only discarding them, but also having a printed card which can be sent to that organization. An illustration could be:

> Dear People:
>
> The Central School District, in reviewing their career files has found that your materials (name of material) portray only one gender, that

being the stereotyped one. We have decided to discard such materials.

We appreciate the materials furnished by organizations such as yours and look forward to using any you have which portray either both or neither sex.

Sincerely,

J.W. Counselor

Unfortunately, probably the worst offender has been the U.S. government. The Occupational Outlook Handbook is about as strongly biased as it is possible for career oriented materials to be. I do not recommend its use. However, as thorough a handbook as this is extremely difficult to find.

Often schools have work/study experiences at their upper levels. Students should be encouraged to try non-typical jobs. Again, counselors must take the initiative. Often a girl will not suggest that she is interested in engineering. A counselor must inquire whether she has thought about is. At the high school level a student is still exploring. Should the student decide that she doesn't like engineering after all, nothing is lost. Boring recommends a philosophy: the best thing we can do is keep as many options open as long as we are able. Many people started out aiming to be a brain surgeon only to become a high school teacher. Aspiring engineers may become technicians. But someone who aspired to being a secretary never became a doctor (Sex Role Stereotyping in the Schools-NEA).

Curriculum

Most counselors become involved with the curriculum of the school. The first step to be made is to eliminate all "he" or "she" references from course descriptions. There is no such thing as a class for girls and a class for boys. Even "bachelor homemaking" and "powder puff mechanics" should not exist. Boys can learn homemaking in the same class as the girls, and girls can learn mechanics along with the boys. Likewise unjustifiable are "Women in Literature" and "Minority Histories." If such courses are not incorporated within the regular history and literature classes, someone is missing the boat completely.

"Alternative Programs" for pregnant girls bear watching. If it is truly an alternative, an option available at the request of the girl, it is useful. If girls are pressured into being embarrassed because

someone else is, the program is being misused (and so is the girl).

## Group and Individual Work

Some of the most rewarding work in which I have been engaged has been the small group sessions which usually are composed of girls who lack confidence. Counselors who wish to begin such groups should take a course in assertiveness training. Also valuable are the "games" used in Value Clarification. Such group work could also be done with small classes, and with groups which do not necessarily lack confidence.

In individual sessions, every counselor must remind him/herself that we cannot assume anything, by sex, regarding career and course selection. Sometimes even I find it difficult to look a petite cheerleader in the eye and say without any change in my voice: "There are three courses open that hour. Would you rather have metal shop, American literature or typing?" But counselors must do this. We cannot assume that girls (or even a particular girl) would not want to take metal shop. Nor can we assume that boys are not interested in interior decorating, sewing, or being an office assistant.

In the same manner, we must say: "A high score in space relations indicates that you would probably be good in such fields as architecture, fashion design, and sculpture,"--whether our client is male or female.

## Conclusion

Guidance departments vary widely from school to school. Each department must be evaluated individually. Such evaluation is not as difficult as those who protest change would like to believe. Someone within the department (or perhaps every one within the department) needs to list all of the programs which are on-going. Then that person(s) must carefully review the list asking which of these programs, and what parts could be causing students to limit their choices because of gender. These are the things which need change.

## Resources

**Publishers**

The Feminist Press, Box 334 Old Westbury, N.Y. 11568. (free catalog listing: excellent books for school libraries, both elementary and secondary, by, for and about women; curriculum guides for elementary, secondary and post secondary schools; women's study course outlines).

KNOW, Inc. Box 85031, Pittsburg, Pa. 15221

**Books**

And Jill Came Tumbling After: Sexism in American Education edited by Judith Stacey, Susan Bereaud, and Joan Daniels. Dell Paperback, 1974. A comprehensive anthology, and excellent introduction to the issues.

Feminist Resources for Schools and Colleges: A Guide to Curricular Materials, edited by Carol Ahlum and Jacqueline M. Fralley. $1.00 from The Feminist Press (address above). Lists more than 5000 sources of feminist materials suitable for use at the high school and college level.

Free to be You and Me, the Ms Foundation Inc. McGraw-Hill Book Co., New York (1974) Book about $4.95, record about the same, film about $250.00 Impact, Vol 2, No 4-5, produced by the ERIC Counseling and Personal Services Information Center, U of M, A2.

High School Feminist Studies, edited by Carol Ahlum and Jacqueline M. Fralley. $5.00 from The Feminist Press, Box 334, Old Westbury. New York 11568.

Let them Aspire! A plea and proposal for equality of opportunity for males and females in the Ann Arbor Public Schools, 1971. $2.00. Order from Marcia Federbush, 1000 Cedar Bend Dr., Ann Arbor, Mich. 48105.

Little Miss Muffet Fights Back, by Feminists on Childrens Media, 1974 $1.00 from Feminist Book Mart, 162-11 Ninth Ave., Whitestone, N.Y. 11357. A bibliography of recommended non-sexist books about girls for young readers.

Nonsexist Curricular Materials for Elementary Schools, edited by Laurie Olsen Johnson. $5.00 from the Feminist Press, Box 334, Old Westbury, N.Y. 11568. A packet of nonsexist teaching materials.

Other Choices for Becoming a Woman, by Joyce Slayton Mitchell, Know Inc. Box 86031, Pittsburg, Pa. 15221 (about $5.00) 1975.

Report on Sex Bias in the Public Schools, rev. e.d., 1972. A variety of articles and documents pertaining to elementary and secondary education. Available for $2.25 from N.Y.C. Chapter, NOW, 28 E. 56th St., New York 10022.

Sex Role Stereotyping in the Schools, an NEA publication, Stock no. 381, 12060, National Education Association, Washington, D.C. 20035 1974)

Sexism in School and Society, by Nancy Frazier and Myra Sadker. Harper and Row paperback, 1973. A useful text for in-service courses for teachers.

Today's Changing Roles: An approach to Non-Sexist Teaching, the National Foundation for the Improvement of Education, Suite 918, 1156 Fifteenth St., N.W., Washinton, D.C. 20005 (1974)

Unlearning the Lie: Sexism in School, by Barbara Grizzuti Harrison. Liveright, 1973, $6.95. An account of efforts to provide an alternative to sexist education in a local school.

DEVELOPMENT OF NON-SEXIST CURRICULA
"HOW TO FEMINIZE AN EVOLVING LESSON OR UNIT"

Lea Schelke*

In his book Curriculum Theory, George Beauchamp defines curriculum as, "The written description of what the students' total learning experience in school will be. It is the departure point for formal schooling." [Beauchamp, 1968, p. 78]

At least five basic components must be considered in developing or changing a curriculum--whether it be a total school curriculum, a subject department curriculum, or a single class curriculum. Those components are: the students, the teacher, the learning environment, the textbooks and materials, plus the subject matter. Unfortunately, most written curricula and their components are extremely sexist.

Sexism is defined as those actions, understandings, attitudes and values which operate in homes, schools, neighborhoods, and greater society to limit the growth and full development of individuals because of their sex. By implication, sexism in any society means that because of gender the female plays a special and subordinate role to the male in all facets within the society. Juxtaposed to the female role is the society's expectation that the male will play a unique and superior role to the female in all facets within society. As with any socializing experience, the training begins before birth, continues through life until death, and lingers afterwards. The entire society carefully teaches children their expected role. Little boys are taught that to become men and masculine and they must be handsome, strong and aggressive; while a little girl must be pretty, weaker, and passive to become a woman and feminine. The little boy must excel at playing sports, while the little girl must excel at watching sports. A little boy must talk and explain his ideas clearly; a little girl must listen and offer encouragement. A boy must be educated for a career that will support a family financially and materially; a girl must be educated to nurture a family with caring and housekeeping. While there are exceptions to these roles, the stereotype abounds. Society, and we in education, expect little boys will goof off in school and that little girls will be model students. When one thinks about

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that, one begins to wonder if we are not a bit confused in our expectations!

The male and female roles are so very closely intertwined that a change in the role expectations for one must be accompanied by complementary adjustments in the expectation for the other group or we will simply create a different set of problems in the name of feminism. Feminism must be careful to consider the effect that gaining equal rights for women will have on men. Both sexes are in this together and we all know who has the power right now.

According to Webster, feminism is a theory that espouses the political, economic and social equality of the sexes. Therefore, both men and women can become feminists.

The children in a feminist society would all be taught to be healthy and strong, assertive and considerate, physically active in some sports and cheering spectators in others, to explain one's self clearly and to listen carefullv to each other, and both sexes would be educated for a profession, housekeeping, and parenting. All facets of society would be engaged in those activities. Once the society has become feminist in its philosophy and practice, then the schools will reflect automatically those beliefs. In the meantime, we in education have a problem.

According to Florence Howe, State University of New York College at Old Westbury, "Like its nineteenth-century counterpart, the new feminism is a teaching movement" [Frazier and Sadker, 1973, p. xi]. We in education have a role of leadership in the women's movement. If we are to create non-sexist school environments we must become feminists in our beliefs and behavior. This is especially important for teachers because I believe they are the key to effective curriculum change by virtue of their position in the classroom. In the final analysis teachers make it happen.

Where and how does one begin to feminize a curriculum? I suggest you must begin with yourself. Define sexism and feminism for yourself through a reading program, careful observation, and experimentation in your personal and professional lives. Read the book credited with initiating the new feminism, Betty Freidan's The Feminine Mystique, and the more recent one by Susan and Martin Tolchin, Clout: Womanpower and Politics. Move into some professional books like Barbara Sprung's Non-Sexist Education for Young Children: A Practical Guide and Nancy Frazier and Myra Sadker's Sexism in School and Society. Subscribe to Ms and Women Sports. Read the women's page in the local papers plus the political articles on page 3 or 4 of the first section. I can almost

guarantee you that after a program like that, your thinking will be such that observation and experimentation will begin immediately. Another book you might try is George F. Gilder's Sexual Suicide. It is from the non-feminist viewpoint, but it always pays to know your opposition. I have not read the entire book to date. I skip around in it until I am frustrated by his misinterpretation of the feminist movement. For example he states, "The National Education Association has adopted a militantly feminist position, and many teachers across the country are turning elementary school into an even more destructive experience for little boys than it long has been" [1973, p. 222]. Not true on two counts! The NEA has a feminist statement but it is considerably less than militant and barely identifiable in operation. Elementary classrooms are not terrorizing little boys or little girls as common practice. Where is his concern for the little girls who rarely see positive role models in their reading and history lessons, to mention a couple of sexist areas?

What should one begin with in changing one's self to a feminist? I believe you should begin with your language usage. Linguists, psychologists, sociologists, educators, and philosophers have studied the extent to which language has influenced the thoughts of human beings for centuries. Linguist Edward Sapir summarizes the relationship for me in his book, Culture, Language, and Personality: Selected Essays:

> Language is a guide to social reality. Though language is not ordinarily thought of as of essential interest to the students of social science, it powerfully conditions all our thinking about social problems and processes. Human beings do not live in the objective world alone, nor alone in the world of social activity as ordinarily understood, but are very much at the mercy of the particular language which has become the medium of expression for their society. It is quite an illusion to imagine that one adjusts to reality essentially without the use of language and that language is merely an incidental means of solving specific problems of communication or reflection. The fact of the matter is that the 'real world' is to a large extent unconsciously built upon the language habits of the group. [1966, p. 68-69]

I have a favorite anecdote to illustrate the relationship between language and thought. You have all experienced something like it I am sure. A two

year old girl and boy are playing together within the range of some loving adults. One or the other of the toddlers decides the other's toy is a better deal. The exchange is made to the displeasure of one and a hitting exchange probably ensues. Inevitably, one of the adults will intervene and admonish the little boy, "Little boys don't hit little girls. It hurts them and we don't do that!"; and/or to the little girl, "Little girls are not supposed to hit people. It isn't polite!" Those children have received some devastating hidden messages about their immediate relationships and their future relationships as men and women. Throughout their lives it will be reinforced by seemingly innocent messages like those and contributes much to the "battle of the sexes"--even to the ultimate, violent expression of that relationship, rape. I just have to believe that a lot of thought and behavior would be different, if both those children were cautioned by a loving adult with these words, "Don't hit people. It hurts them and we want to help others instead of hurt them."

We can all help create a feminist society by making changes like those in our language usage. A teacher can create a positive feminist learning environment in the classroom or anywhere through carefully designed language usage. Instead of "Everyone pass his paper to the front," why not "Everyone pass your paper to the front"? I urge you to try it. You will learn a lot about sexism and language just from changing a couple common expressions.

The two other curriculum components, materials and textbooks and subject matter, also are desperately sexist and in need of great change. Again, I believe the teacher can effect necessary changes without going through a long and involved official curriculum design process with colleagues. Before we get into that I want to share some textbook and other studies with you.

Many studies have proven that the materials that we have to use in our classrooms are notoriously racist and sexist. Professor Lenore J. Weitzman and Diane M. Rizzo conducted a study from 1972 to 1974 at University of California on the images of women in elementary textbooks. They selected the most commonly used series in their area for reading, spelling, math, science and social studies. Criteria were developed and a computer program used to analyze their findings. Every text was sexist--even the social studies text which did make the best effort. One of their findings really surprised me--that was the spelling series. You might well wonder how can a spelling book be sexist? The writers did it. They assigned gendered stick people to show how consonants and vowels operate in spelling rules. The consonants

control the sounds the vowels will make. Naturally, the consonants were male and the vowels were female. Throughout the spelling book cute little male consonants push, shove, pull, squeeze, kick and order around the cute little female vowels. That's pretty blatant hidden curriculum. The tragedy is that the series has some really sound ideas about teaching life-long spelling skills. All they had to do was keep the gender of the stick people neuter. Why didn't they? Because we are influenced by our hidden language. What I don't understand is why those men didn't remember their loving adult direction "not to hit little girls."

That study has been incorporated into a slide presentation which is available through the NEA Resource Center on Sexism in Washington D.C. I highly recommend your seeing it. After creatively explicating their findings, the slide show demonstrates how publishers, educators, and parents can write their books in a non-sexist style.

The Michigan Women's Commission has published a report called Sex Discrimination in an Elementary Reading Program [1974] which is based on the work of the Committee to Study Sex Discrimination in the Kalamazoo Public Schools. It is a very thorough study and you might want to study it as a model for what you will have to do if you wish to change the texts in your school. These are three of their findings: 1) Taking biographies and biographical items together, 75 percent are about males and 25 percent are about females [p. 13]. 2) The textbooks contained sections identified as stories. A total of 169 stories were included. 133 had main characters that were male and 22 had female main characters. The remaining 13 have both main characters and 1 whose gender is neuter [p. 24]. 3) The poems were reviewed for gender orientation. Of the total of 151 poems in the books, 41 percent are male-oriented while 7 percent are female-oriented [p. 25].

Linda Harrison and Richard N. Passero from the geology department at Western Michigan University conducted a series of studies to answer the question, to what extent do children include both males and females when presented with masculine-oriented generic nouns and pronouns? In one study they administered two forms of a simple test to two groups of elementary students. Form 1 used nouns and pronouns referring to people with neuter terms such as people, handmade, pilgrim ancestors. In Form 2 the nouns and pronouns were changed to masculine-oriented generic terms such as man, man-made, and pilgrim forefathers. Their preliminary results, which are written up in Science and Children January, 1975 issue, suggest that

males and females alike do not readily envision both sexes when dealing with masculine-generic terms.

This study reminded me of a running battle I conduct with my history and social friends. I chide them with comments like, "It's bad enough that society does and has historically barred us women from active political and career participation, but then you historians compound the discrimination by ignoring the females who did succeed in those fields in your history books; and, further, you totally ignore the nurturing and supporting role of women, which has perpetuated us as human beings and made you men so successful at your wars and careers."

In summary, teachers are the mainstay for implementing curriculum and the key to effecting feminist change because of their position of control in the classroom and their influence over the learning environments for their students. The fact that about 68 percent of them are women is immaterial, because like feminists, sexists come in both sexes. As the studies have indicated, the books, materials, and subject matter will probably be sexist and thus harmful to developing the potential of every female and male in our classrooms. Since the students are probably also mainly sexist in their attitudes--even kindergarteners--the feminist teacher faces a tremendous challenge. We, as teachers and feminists, can feminize our curricula without extensive curriculum design processes by changing our personal practices and language usages in the classroom and our lives. We can do it beginning now within the parameters of most written curricula. In the words of my Navy-reared nephew, "Let's have at it!"

Now, I would like to explain an evolving unit of mine as a model. It is an outline of the introductory explanation for a speech and research unit I have been developing for the last two years in my eighth grade middle school Language Arts classes. It is self explanatory.

<u>General Task: The student is to present a speech as if she or he were a famous person giving a speech on a topic at a conference during the time the famous individual lived</u>

That seems relatively simple do, but I worked long and hard at the wording because the opening sentence must be carefully worded with neuter gender words in order to encourage both the boys and girls. It is a complex assignment involving almost every language arts skill, but especially two toughees, research and speech making. The initial contact becomes even more important when the students begin the search for their famous person, as the girls will

have only one-fourth the biographies to explore--if you are fortunate, and any early indication of women being less important will discourage them unnecessarily.

A. Select any person in which you are interested.

Famous men will immediately come to mind so I usually begin with an unexpected example that shatters some stereotypes. For example I might say, if you are a classical music nut and would like to investigate a famous conductor or composer there is Sarah Caldwell or Barbara Kolb or Leonard Bernstein and Detroit's Freeman or Beethoven. On the other hand if hard rock is your thing, why not do Janis Joplin or Jimmy Hendrix. Some others:

Authors: Agatha Christie, Pearl Buck, Mark Twain
Politicians: Martha Griffiths, Jeff Padden
Union people: Myra Wolfgang, Walter Reuther
Sports figures: Chris Everett, Jean King, Kareem Abdul Jabar, Babe Didrickson Saharias, Karen Logan, Mabel Stark, Janet Lynn, Dorothy Hammel

I deliberately emphasize women in areas like sports. Immediately the boys will start identifying the men and they are encouraged because they thought of an idea on their own. I usually keep several examples in reserve for use later when the students start asking for examples from other professions. I use other teachers and their hobbies for examples too. For example if someone were to express an interest in pilots I would mention Amelia Earhart and Charles Lindberg and Carol Wallman and Bruce Barrow, two teachers in our building who are pilots.

B. If you are a girl you must select a woman. If you are a boy you must select a man.

Usually someone argues that this is a sexist requirement. On the surface it appears to be. However, I insist on it. Otherwise everyone would become a man--they are so easy to identify and it is acceptable for a girl to pretend to be a man. I would end up with few positive female models for boys and girls to see and emulate. This requirement went through some radical adjustments between the first time we did it and the second. The first time around I could not make it stick, because our media center simply did not have enough material on women. I then tried to insist that a girl could research a famous male person, but then had to create an imaginary female and be her for the speech. I also tried saying a girl

could become a man if she could find a boy who would become a woman. I had to do some manipulation last year, but all my girls did women and my boys did men. I had a close one with one little girl who wanted to be a city mayor. Fortunately, the mother of one of the seventh graders had been Trenton's mayor a few years ago and she bailed me out.

C. You must use an appropriate audio and/or visual aid.

This requirement assures that every boy and girl will have the opportunity to personally work with a tape recorder, movie projector, records etc.

D. The best speeches will be given in an open house/ assembly and a proportionate number of females and males will be selected by the class.

Frankly, this is there to assure that girls are selected and to encourage them to try. The boys have a considerable advantage in this project. Because they have such a big field to select from, they finish up their research early. They can then devote time to delivery perfection and costuming, while the girls are still trying to identify their person. Naturally they go first on delivery because more are ready, so I had to build in some assurances that girls would be represented.

Models such as the one described above can be used to supplement a curriculum which has yet to encourage students to examine all the alternatives available. I would strongly urge individual teachers to hold themselves responsible for providing similar opportunities for all their students.

# INVOLVEMENT AND CONCILIATION IN THE APPLICATION OF TITLE IX

Florence I. Beier*

Our Title IX Committee has developed two tests for our activities in trying to bring about equal opportunity regardless of sex in the Plymouth Community School District. The questions which we continually ask are:

1. Is the purpose of this action to help chilren learn better and to improve the quality of life in our community?

2. Are the people affected by the problem being involved in its solution?

The following is a brief description of this district's efforts to comply with Title IX regulations in the first year and a training procedure which grew out of these experiences. The situations described are not organized either chronologically or by topic. They were chosen to illustrate the possible effects of acting in a spirit of conciliation.

The Plymouth Community School District, composed of fifty-four square miles spanning Wayne and Washtenaw Counties, has close to 14,000 students. Its residents are mostly middle class commuters. The school district is one of the most rapidly growing in Michigan. At the time Title IX became effective, both the president and vice president of the Board of Education were women. In the face of some opposition from the rest of the Board, which was all male, they were outspoken advocates of women's equity. The district had just hired its first woman central administrator, the Administrative Assistant for Community Relations.

The Plymouth Community School District was able to complete the preliminary obligations of Title IX quite promptly. Appointed as Title IX coordinators were the Administrative Assistant for Federal Programs, Program Planning, and Research and the Administrative Assistant for Community Relations. Notification of non-discrimination of the basis of sex appeared in the local newspaper, all school newsletters, the high school newspapers, internal communication to employees, on the radio, and on communications from

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the personnel department. The School Board adopted an official statement of its intention to comply with Title IX. The Coordinators recruited a representative Title IX Committee composed of teachers, students, parents, administrators, non-certified employees, and Board members. This committee was officially appointed by the Board.

One of the first tasks of the committee was development of a grievance procedure. We also divided into subcommittees to begin evaluating school district policies and practices and their affect on discrimination on the basis of sex. Nine areas for evaluation were selected: district and building level policies, athletics, facilities, counseling, employment, student activities, special education, discipline, and curriculum and materials.

When the opportunity came to participate in a workshop with administrators from another district, I chose situations based on what we had experienced here. In some cases we had found a way to deal with the concern; in others we were still searching and I hoped to benefit from the thoughts of the other group. The "sample situations" have been altered to prevent identification of individuals. The background will also avoid specifying schools or persons.

In the workshop each participant received sheet with "Questions to Answer about Sample Situations." About fifty participants were seated in a large circle at adjoining tables. The same problem was handed out to pairs of administrators sitting next to each other so they could discuss the problem and find a joint answer. After about fifteen nimutes the whole group heard two or three answers to each problem.

Questions to Answer About Sample Situations:

1. How do you feel about this situation?
2. Does Title IX have any application to it?
3. How would you investigate the implications and extent of this practice?
4. What kind of affirmative action, if any, would you take?

Sample A

Elementary school children in Jones School are eager helpers. Their principal is proud of the way they are organized. Every year he forms squads of boys as playground and crossing safeties. The girls have a club called "Room Helpers" who dust and straighten classrooms and water plants, etc. Each spring the boys receive a safety certificate, and the girls invite their mothers in for a helpers' tea.

Comments:

This situation is nearly identical to one for which we have yet to find a really satisfactory solution. Of course, Title IX applies, but the problem is much more one of attitude changes than official policy. The principal responded defensively to suggestions that this was not a fair system. He pointed out, probably correctly, that parents expect and approve of this arrangement. Since the children who participate are those who strive to please the adults, they also have not known enough to complain.

The approach we are taking is to form an elementary school activity committee composed of elementary school parents, a teacher, and a principal. They will develop a check list and plan to interview personally each elementary school staff about a number of "volunteer" activities for the children. We know that most of our elementary schools have dropped the kind of discrimination described in Situation A. We hope to help this school to change by involving it in an over-all evaluation and affirmative action plan with all the schools. We would like to find an area where this school can be a "shining example" to the others. Teachers and administrators will also be participating in some general "consciousness raising" next year which may help them want to change.

Sample B

The staff and parents organization at Green Middle School have decided that intramural sports during lunch hour would be a good idea. The proposal is to have swimming, basketball, and soccer for the boys, and volleyball, softball, and gymnastics for the girls. However, there is a problem with finding enough space for these activities. Besides this, some girls have asked for swimming competition and boys want to do gymnastics. They may just drop the whole idea.

Comments:

This is an area where at least two of our four middle schools have found a good solution. Intramural are organized around the homeroom unit with all sports played by both boys and girls. Basketball, baseball, swimming, kickball etc. are all set up so that anyone who wants to play that sport is allowed to participate, regardless of ability. Because homerooms are heterogeneous the competition is quite fair. In most sports, the sexes are fairly evenly divided.

Much of the success of this program is because of the sensitivity and non-sexist leadership of the teachers who run the intramurals. Naturally, Title IX would apply, but it would be difficult to enforce equality unless the teachers were creative and cooperative.

Sample C

Career Day is highlight of the year for the counselors at West High School. It is supported by the Lions, Moose, and Elks Clubs, who recruit business, professional, and technical people to talk with students. The students fill out questionnaires in advance and the counselors suggest which job areas each student should consider. The gym is arranged with nurses, telephone operators, secretaries, dietitians, and elementary teachers on one side. Along the other three sides are mechanics, engineers, doctors, lawyers, accountants, plumbers, etc. The women and girls always seem to be at one side of the gym.

Comments:

From the description, it sounds as if Title IX is definitely being violated since young men and women are not being offered afforded equal job opportunities if they don't look at different kinds of careers. The first step in improving this would be to meet the counselors and have a general in-service session on career counseling, helping them to be aware of the value of having their counselees look at all kinds of jobs. The physical arrangement of the gym can be set up so that "traditional" male and female careers are together, perhaps arranged by general topic. An hour or two, just before the conference, spent with the business, professional, and technical people who give advice would help raise their consciousness, too, so that they do not use sexist restrictions to turn away either men or women.

Sample D

The Parker School District faithfully publishes notices of non-discrimination on all its employment materials. It also posts all job openings so that all employees can see them and have an opportunity to apply. Each posting lists the qualifications required for that position. Most administrative positions list three to five years experience in coaching or similar activities. Secondary school administrators are expected to pass a physical examination which involves a test of strength. Central administrative positions require prior experience as a building principal. Almost all administrators in the district are male.

Comments:

Simply removing the obviously sexist restriction based on strength or coaching experience cannot really solve the problem of the small number of women administrators. Affirmative action in training and accepting women as administrators is clearly required, in my opinion. It is also terribly important that once a woman administrator is appointed that she receive not only equal treatment but in-service opportunities to improve skills which may be deficient because of earlier inequities. Monitoring this part of the application of Title IX is both subtle and long-term.

Sample E

A local group called "Equality Above All" has been reviewing the textbooks used in the schools of the Orange School District. They have also gone through the card catalogues of the school libraries. At a regular meeting of the Board of Education, they present a list to the Superintendent and the President of the Board of books which they have identified as sexist. They demanded that these books be removed from the libraries and from use as textbooks.

Comments:

Title IX clearly does not apply to this situation as an enforcing implement, since it specifically excludes censorship of materials in respect for the First Amendment. However, the implications of this situation is far reaching in terms of women's equality in two respects.

First, I believe it is important to help channel the zeal of organized women's groups so that it really improves the lot of females in the school system. In my experience the males are firmly enough in control that a frontal assault can really backfire, bringing on such comments as, "If they want to fight that way, I'll just defy the law and let them take me to court." On the other hand, steady pressure by presenting facts and developing broad community support can bring about quicker and more lasting improvement.

Second, materials used in the schools are a source of reinforcement for sexist attitudes. The best tactic in this case would be to develop joint committees of teachers and women's group members to review library and textook materials. Actions could include screening new purchases for sexist content, developing supplementary materials to be used with books on hand, and writing lesson plans or activities

which could help students to be aware of how the roles of men and women are presented in their school books.

As important as books and media are in the learning process, the key to children developing non-sexist attitudes is the teacher. In-service training and on-going assistance for the classroom teacher in using materials in non-sexist ways is the most important action.

If the women's group really wants to "blast" someone, the most effective route for them would be a campaign to force publishing companies to make more non-sexist materials available for purchase. This could involve letters to the companies as well as political pressure through professional educators associations, school boards, and state departments of education.

## Conclusion

The guidelines and deadlines of Title IX are very useful to a school district in structuring a program of improvement of equal opportunities regardless of sex. However, development of lasting practices and spirit of equality requires changes in individual attitudes. For this, we must have involvement and conciliation.

# CONDUCTING AN IN-HOUSE INVESTIGATION OF A TITLE IX COMPLAINT

Ruth H. Moorman*

Title IX of the Education Amendments of 1972 mandates that, within educational institutions, discrimination against women be abolished in hiring and personnel practices and in curricular procedures and activities. This law is meant to eliminate the pervasive societal structure of sexism that exists in this country, wherein women are systematically denied equal opportunities and education. It is far-reaching and affects all aspects of public school education. Although powerless to deal with attitudes and hidden personal feelings, implementation of Title IX will assure at least a step in the direction of assuring women equal educational and career opportunities.

The Willow Run Community School District, because of farsighted administrative policies and a concerned Board of Education, has offered fairly equal opportunities to women students and employees for some time. When Title IX went into effect (Summer, 1975), much of what it mandated was already operative in Willow Run. The district, however, set to work to follow Title IX guidelines and bring into compliance those practices that were discriminatory.

## Grievance Procedure

Following the appointment of the Title IX director, myself, perhaps the most important of the many ensuing tasks was the development of the Title IX Grievance Procedure for the district. Citizens were notified of the procedure via school and community publications, "The WRapper" and "The WReporter" respectively and via the distribution of flyers. This grievance procedure provides the following five-step method of resolving alleged complaints:

WILLOW RUN COMMUNITY SCHOOLS

Notice to Staff and Students
Regarding Title IX

Step one: A grievance shall be filed within five working days of the alleged violation with the

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principal of the building where the alleged violation occurred or with the immediate supervisor. The grievance shall be made in writing, and shall include the name of the grievant; the facts giving rise to the grievance; the provisions of Title IX allegedly violated; the contention of the grievant; the relief requested; and shall be signed by the grievant. A conference shall be held within five working days after receipt of the written grievance. The principal shall issue a written disposition of the grievance within five working days after the conference.

Step two: If the grievance is not resolved in step one, appeal may be made to the coordinator of Title IX for Willow Run Community Schools within four working days of the principal's or supervisor's response in the previous step. A conference shall be held within five working days after receipt of the written grievance. The Title IX coordinator shall issue a written response within five working days after the conference. If further investigation is needed, additional time may be allowed by mutual agreement of the Title IX coordinator and the grievant.

Step three: If the grievance is not resolved in step two, it shall be appealed in writing to the superintendent and/or his/her designee within five working days of the disposition at step two. A copy of the written report from the preceeding steps will accompany the grievance and the parties will meet within seven working days, unless a longer time is mutually agreeable, to discuss the grievance. Said meeting shall take place after work and/or school hours. Response to the grievance shall be given in writing within seven working days of the meeting.

Step four: If a satisfactory disposition of the grievance is not rendered at step three, the grievant shall have the right to a hearing with the Board of Education concerning the issue. A request for such a hearing shall be made in writing within four working days of receipt of the superintendent's disposition at step three. A hearing shall be scheduled within thirty calendar days from receipt of the grievant's request. A written response from the Board of Education shall be given the grievant within ten working days after the hearing.

Step five: If a satisfactory disposition of the grievance is not rendered at the Board of Education level, the grievant shall have the right to appeal to the Department of Health, Education and Welfare within the federal government pursuant to its rules and regulations with ten calendar days after receipt of the Board disposition or such further time as may be permitted by said rules and regulations.

NOTE TO STAFF: Please spend time in your class(es) explaining this grievance procedure to students, especially younger students. The law mandates that all students (K-12, preschool, adult education, etc.) and all staff know and understand this grievance procedure. Please call Dr. Moorman, ext. 288, if you have any questions.

Grievances

The first grievance that was presented concerning Title IX had to do with testing given at Edmonson Junior High School. The Kuder General Interest Survey test was administered to all eighth grade students May 11, 12 and 13. According to the grievance, "The Kuder test discriminates on the basis of sex (grading is done on a separate sex scale) and will be used as a basis for career and vocational counseling, thereby rendering the counseling process in violation of Title IX." The grievant stated the provisions violated as Title IX, Subpart D, Section 86.36, Counseling and use of appraisal and counseling materials:

> (a) Counseling. A recipient shall not discriminate against any person on the basis of sex in the counseling or guidance of students or applicants for admission.
> (b) Use of appraisal and counseling materials. A recipient which uses testing or other materials for appraising or counseling students shall not use different materials for students on the basis of their sex or use materials which permit or require different treatment of students on such basis unless such different materials cover the same occupations and interest areas and the use of such different materials is shown to be essential to eliminate sex bias. Recipients shall develop and use internal procedures for ensuring that such materials do not discriminate on the basis of sex. Where the use of a counseling test or other instrument results in a substantially disproportionate number of members of one sex in any particular course of study or classification, the recipient shall take such action as is necessary to assure itself that such disproportion is not the result of discrimination in the instrument or its application.

Contention

The grievant further contended that this test (the Kuder) which discriminates on the basis of sex would be used as a basis for career and vocational

counseling thereby rendering the counseling process a violation of Title IX.

Relief Sought

1. That the Kuder test not be administered again in the system.
2. That the results of the test not be placed in the students' files, in other words, that the results be discarded.
3. That an alternate test be chosen, possibly the Ovis.

The grievance was filed with the building principal (Level I) who responded as follows:

1. The decision to administer the Kuder test rests with the Testing Committee and not the building administrator.
2. The tests were purchased and paid for by the district for use by the schools. The building administrator can not discard a district approved and regulated activity.
3. The building administrator recommends investigation of the Ovis for future use.

The grievant was not satisfied with the response from the building principal, particularly the vagueness regarding an alternate test, and appealed to the Title IX coordinator for resolution. The coordinator conferred with the high school counselor in charge of testing regarding alternate test(s) to the Kuder. After considering several interest surveys, the possibilities were limited to two: The Strong-Campbell Interest Test and the Ohio Vocational Interest Test (Ovis). The review of the Strong-Campbell revealed heavy emphasis on professional careers with a reading level college to adult and as all the tests reviewed the Strong-Campbell was normed on male populations. It was decided that the Strong-Campbell would not serve the best interest of our students and was eliminated.

A review of the Ovis revealed that it was normed on a population most nearly approximating the real world with an average reading level. However, the Ovis results are determined on the basis of sex.

Since the Ovis seem the best choice of the available interest surveys, it was recommended that it be used creatively with both the junior high and senior high students: students will not identify their sex on the answer sheets; two readings using national and local norms for both sexes on each test will be requested; comparative results will be used when counseling with both female and male students.

The grievant accepted this recommendation for successful resolution of the grievance.

The second grievance that was presented concerning Title IX was concerned with teaching assignments for a female gym teacher at the high school.

Facts

1. The male coach of boys' sports was assigned all physical education classes.
2. The female gym teacher was assigned as a math teacher with no physical education teaching assignments.
3. The female teacher has more seniority than the male teacher.

Provision violated: Title IX, Subpart E - Discrimination on the Basis of Sex in Employment in Education Programs and Activities Prohibited, Section 86.51, Employment:

> (2) A recipient shall make all employment decisions in any education program or activity operated by such recipient in a nondiscriminatory manner and shall not limit, segregate, or classify applicant's or employee's employment opportunities or status because of sex.

Contention

The grievant contended that preferential assignments to the male teacher were made to ensure success in his extra-curricular coaching duties since his gym classes consisted of students whom he coached in boy's sports. Moreover the grievant charged that female students were deprived of gym classes contrary to their wishes.

Relief Sought

1. That the female teacher be reassigned to her original position of teacher of physical education.

The grievance was filed with the building principal who responded that:

1. Building principals have a right to assign teachers accordingly to the instructional program needs.
2. He was restricted by not having a sufficient number of certificated math teachers among his teaching staff.

Not being satisfied with the response at Level I, the grievant filed the grievance with the Title IX coordinator who, in conference with the building principal, reached the following agreement: Teaching assignments will be adjusted beginning with the second semester of the 1976-77 school year so that the female gym teacher will teach two or more physical education classes.

The grievant accepted this acceptable resolution at this time.

The violations were clear in both cases, therefore resolutions were not difficult to achieve. The important observation is that in each case the grievants followed the procedures in registering their complaints.

Some other Title IX complaints which have been filed and resolved regard assisting non-school organizations by disseminating sexist literature and providing comparable pay for female and male instructors of sports activities. With regard to the distribution of literature for non-school organizations, administrators are required to screen all literature for sexist bias and deny distribution if bias is found. The salary schedule for the district has been revised this 1976-77 year to provide an equitable level for men's and women's sports.

# THE TRAVELING SEX ROLE ROADSHOW: OBSERVATIONS ON SEX ROLE TRAINING WITH GROUPS

Gail Resnik*

## The Scene

An in-service day for an intermediate school district. Half-way through the one hour session: The woman in the fifth row, second seat is smirking at me. She shifts position in her seat, leans toward me and interrupts the small group exercise. "Will you answer a question for me?" "Sure" "Tell me, what do you think about women who act like men?" I can guess by the way she glances back at her cronies that she is about to defend stereotypical womanhood. She is just warming up. Slightly threatened, but still calm, I ask her to explain the question. She pauses, and then narrows her eyes, looks me and my blue pantsuit up and down and says, "You know. Women who dress like men." I become unnerved. "You mean like me?" She smiles with a profound and ancient wisdom. "Well, I don't know, dear. I guess if you think so." I tense up, turn toward the blackboard and count to three as the audience buzzes. I realize that I've nearly lost the whole session by getting into a cat fight with this earnest if hostile examiner. We get back to the work at hand.

The scene described above is one of many experiences I have had on what I have come to refer to as my traveling sex role roadshow. During the past two years, I have talked with a wide variety of audiences about sex roles, sex role stereotypes, and sexism. I share this particular anecdote not only as an example of the personal predicaments in which I have sometimes found myself, but because it highlights the atmosphere which waits for those of us who work with people on identifying values that relate to changing sex roles. Clearly, exploring sex discrimination is a serious business: it challenges our basic human assumptions, and, to some, constitutes a threat to our entire social order. What follows is:

1. A description of the material I have presented to intermediate school districts, college classes, dormitory residents, and pre-school parents.
2. Some comments on the assumptions, values, and goals that contribute to my program design and

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style of delivery.
3. Some observations and memories of the audiences I have interacted with, and
4. Some final comments and conclusions about my work.

The Program

My investigation into sex role stereotypes started in 1973 with the University of Michigan School of Education Women's Commission. After a number of discussions among Commission members of the need to do training with teachers in the area of sex discrimination, I agreed to prepare some materials with this focus. The individualized, small groups, and large group exercises that I researched, designed, and tested during the two semesters I taught "Women and Education" as a graduate student are now published in my book, Challenging Sex Discrimination: Training Modules. [Ann Arbor: Women's Commission, School of Education, University of Michigan, 1975]

The program consists of eight individual and group structured learning experiences, each of which can be done in approximately thirty minutes to one hour or more, depending on the audience and the time allotted to discussion. The material is written in a programmed learning format, including a pre-test and post-test, extended bibliographies, and suggestions for how to expand the mileage on the exercises. Each module is prefaced with a brief introduction to the concepts presented, as well as behavioral objectives for each section.

The program is divided into the following three basic units called modules, each prepared as a complete session which may be presented individually or in sequence with the other modules. The modules can be run all in one day, spread over a number of days, or used in combination with other materials according to the needs of an individual program. Trainers often opt for doing the exercises consecutively; since rarely is there more than an hour or two with a group, the first few exercises are in depth, and the others simply mentioned during the closing minutes of a session to stimulate thinking. The presentation usually starts with data on job discrimination, birth rates, and other statistics that help to disarm resistance to the idea that sex discrimination exists. The program reads as follows:

Module I: Sex Role Stereotypes

Exercise 1: What are sex role stereotypes? Groups identify and value-rate familiar stereotypes.

Exercise 2: What values do we hold regarding sex roles?
A number of values statements are made; participants rate them from Agree Strongly to Disagree Strongly, compare responses and discuss.

Exercise 3: What would you like to be when you grow up?
Participants explore their own career choices at various ages, as they have been affected by stereotyping.

Module II: Sex Role Stereotyping in Schools

Exercise 1: Famous Women
Participants list the names of famous women and identify their contribution, then try to identify the names on a prepared list.

Exercise 2: Sex Stereotyping
Participants write two versions of the same story by filling in the blanks; first with sexist and then with non-sexist responses.

Exercise 3: Role Plays
On career choice, athletics, as played by students, parents, counselors, coaches.

Module III: Sex Discrimination

Exercise 1: The Myth vs. the Reality
Participants measure their information against data from the Department of Labor.

Exercise 2: Laws that relate to sex discrimination
Participants match discriminatory situations against the laws.

The exercises are intended to be stimulating and easy to adapt to a variety of situations. They can be used with small and large groups, though the smaller the group is, the more time there is for sharing.

Assumptions, Goals, Style

A basic assumption is that attitudes about sex roles are deeply imbedded, and that these attitudes sometimes lag behind or even conflict with current laws, as well as such variables as economic conditions, technologies, or birth rates. One way to help people to adjust to these new phenomenon is to give them an

opportunity to confront their own values, assumptions, and built-in sex role stereotyping mechanisms in a safe setting. This process can be interesting, confusing, reaffirming or threatening to people, but most people are ready to comply with legislation, and are primarily concerned about the welfare of their students or children. Some people need to be assured that being conscious of sex role stereotypes does not entail adopting whole new belief systems, nor does it mean giving up femininity, masculinity, or sex. Women's liberation is not a panacea, because there are trade-offs as well as benefits to both sexes with flexible sex roles. However, challenging sex discrimination is something that both men and women need to work on for the benefit of all of us.

The purpose of the presentation is to raise consciousness by identifying individual and social values. People cannot be expected to change their values after one session, but I do hope to stimulate thought and to provoke people into identifying their basic assumptions. Ideally, this experience will translate into positive social actions and increase sensitivity to unconscious discriminatory behaviors. Of course, there are certainly people who will continue to be bored, confused, threatened or simply amused by anything identified with sex discrimination, Title IX, women's lib, feminism, or equal opportunity. Therefore, one goal of doing the presentations is to give people the chance to observe, question, and air their criticisms in a setting openly directed toward exploring "women's issues." The majority of the time is spent in small group discussion, so that participants get the opportunity to interact with their peers and colleagues in their own setting. The sharing that goes on in small groups enhances the potential for people to begin to work together to make their own environment less sexist and healthier for everyone.

Style

Because challenging sex discrimination will take cooperation, good will, and mutual respect, a style that is non-threatening and positive can be very helpful: the assumption is that this is an unfinished evolution and therefore a job we must work on together. Examples are drawn from research, history, from Hollywood and television, and from the experiences and observations of the participants. Because the goal is to create a setting where stereotypes can be identified and hopefully deflated, lively discussion and sometimes debates between participants are indications that participants have done some mental stretching during the session.

## Reactions

Each new audience brings as many reactions as there are individuals in the group, but there are some responses which can be expected from most new groups. In general, there is much interest in the topic of sex discrimination. Most people seem to have experienced a great deal of media propaganda and a smattering of hard information, but have had virtually no opportunity to discuss these issues among their own peers. Some people come into these sessions suspicious, some hopeful, some hostile, and many express astonishment that "women's issues" even merit discussion. One may be thanked profusely for the support and credibility brought to the topic, as well as accused of being personally responsible for wrecking the world. During group discussion there is excitement, raucous laughter, puzzlement, enthusiastic nods, and cajoling among colleagues and friends to test out new behaviors. People often begin to share their own angry stories about altered career plans, destructive stereotyping, and about discrimination they have seen in hiring and promotions.

Many participants are shocked by job statistics and the declining educational achievement levels of female students, while others view the presentation as another plot by school administrators (or feminists) to give them a hard time. People struggle with their own belief systems, measuring the old mental types with the new role models that are suggested. The need to confront sexism is after all, a hard concept for most to accept, let alone integrate into one's behavior in daily life. Some of these concerns come up in the questions that are asked, such as:

"Is this the sex seminar?"

"Isn't being a housewife respectable anymore?"

"How can I teach about women composers? Do you want me to make some up?"

"Will I damage my children if I work?"

"Don't most feminists hate men?"

"Why should we bother training girl athletes? They'll give it up anyway."

"How can I find the time to correct the inadequacies of the texts I use?"

"What are the divorce rates among career women?"

"How can we overcome stereotypes at school? Look at television. Look at the family."

There are no easy answers to these questions, but they certainly start off lively discussions. I measure my own performance in part by the number and variety of issues that have come up during the session. If discussion has been stimulated, then I believe that the door has been opened to some personal growth and perhaps even to some institutional change in the future.

## Conclusion

Perhaps I am too close to the material, or too personally invested, to make an objective evaluation. I usually request some form of written evaluation after each session and I set aside time for verbal feedback. In addition, I have subjected the written material to scrutiny by teachers, graduate students, and academicians. Most of the response has been pleasantly affirmative, though the final program is the product of three major overhauls in response to suggestions and criticism. After at least two dozen performances of my traveling sex role roadshow, I am still satisfied with the material and its potential value as an educational tool. However, there are three concerns which have surfaced that can be shared here.

First, given our current economic situation, and what some perceive as a generalized backlash from the activism of the sixties, there is the danger that the sensitivity to sex discrimination may lose steam, and become another good idea that never became a permanent institutional or social priority.

Second, there is a concern about personal backlash, both from zealots and from opponents of liberation from sex role stereotypes. If people make a point of overemphasizing the contributions and potential of women, males and females will see each other as competitors rather than as people needing equal opportunities and the freedom to chose from a variety of roles in life.

Third, adjusting to these changes is difficult and often painful. We do not have many models of dual-career marriages; we do not have many decent childcare facilities; and we have not begun to actually undo the damage and waste that sex discrimination causes, especially in employment and our educational institutions. We have added new pressures to men and women in our struggle for justice, and we simply are not clear about what the results will be in terms of our life styles and life choices.

I am not usually given to such pessimism. I believe that all people have the world to gain by confronting and deflating stereotypes and discriminatory behavior in any form. My "traveling sex role roadshow" has been extremely rewarding personally, and I hope to see more educators and feminists taking to the road as facilitators to the birth of a new consciousness about sex roles. It is a great opportunity.

# II. SEX DISCRIMINATION IN EMPLOYMENT

# EMPLOYMENT PRACTICES AND TITLE IX

John R. Runyan, Jr.*

Title IX of the Educational Amendments of 1972, 20 U.S.C. § 1681 et seq., as amended (Supp IV, 1974) (Hereafter Title IX) is perhaps least noteworthy for its employment aspects. Discrimination in employment on the basis of sex, after all, has been legally verboten under Title VII of the Civil Rights Act of 1964, 42 U.S.C. §2000e et seq. (1970) since July 2, 1965, for private employers with one hundred or more employees, and ostensibly since December 21, 1966, for private and public employers employing eight or more persons within the State of Michigan including the State and its political subdivisions.[1] In addition, nondiscrimination on the basis of sex in the payment of wages has been the law for private employers since June 10, 1964 under the Equal Pay Act of 1963, 29 U.S.C. § 206(d) (1970); and since at least Reed v. Reed, 404 U.S. 71 (1971) decided by the United States Supreme Court in 1971, the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution has been recognized as affording a potential remedy for intentional discrimination on the basis of sex by employers acting under color of State law (including public school systems). The Equal Employment Opportunity Act of 1972, 42 U.S.C. § 2000e et seq. (Supp. III, 1973), amending Title VII of the Civil Rights Act of 1964, supra, brought educational institutions, state and local governments, and private employers with 15 or more employees within the proscriptions of Title VII effective March 24, 1972 and amendments to the Fair Labor Standards Act in 1974 extended the provisions of the Equal Pay Act to state and local governments as employers. Consequently, the provisions of Title IX which forbid discrimination in employment on the basis of sex are generally reflective of a recipient's[2] previously existing obligations under state and federal law.

## Impermissable Employment Practices

The provisions of Title IX, particularly as they relate to employment, are not nearly as definitive as those of Title VII of the Civil Rights Act of 1964,

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supra. The 1974 amendments to Title IX, however, expressly authorize the Secretary of Health, Education and Welfare to

> ...prepare and publish...proposed regulations implementing the provisions of Title IX...relating to the prohibition of sex discrimination in federally assisted education programs...

The regulations promulgated by the Secretary were published in the Federal Register on June 4, 1975 (40 Fed. Reg. 24128) and became effective on July 21, 1975. They have now been codified at 45 C.F.R. §86.1 et seq. (1976) and reveal that while they

> ...are independent of, and do not alter, obligations not to discriminate on the basis of sex imposed by...any other Act of Congress or Federal regulation. 45 C.F.R. § 86.6 (1976),

the regulations will result in a recipient's equal employment responsibilities under Title IX being interpreted and enforced in a manner consistent with its preexisting obligations under federal law. In fact, it is evident that the regulations themselves have largely been modeled upon and adapted from concepts of discrimination articulated in or developed as the result of litigation under Title VII of the Civil Rights Act of 1964. A few exceptions to this principle will be discussed subsequently. Consequently, an appreciation of the concept of unlawful discrimination as it has evolved from the cases decided under Title VII is a useful guide in determining what kinds of employment practices are proscribed by Title IX.

The Concept of "Discrimination"

The law of employment discrimination developed under Title VII is of considerable value in understanding the proscriptions of Title IX, even though the provisions of Title VII outlaw discrimination based upon race, color, religion and national origin as well as sex. That is so because the underlying objective of both acts remains the same regardless of the nature or basis of the proscribed discrimination: both Title IX and Title VII share the common purpose of attempting to encourage employment decisions based upon individual merit and ability rather than upon class stereotypes and mythical generalizations which have operated in the past to frustrate the aspirations of a significant segment of the potential labor force in this country. Both are bottomed on "[t]he ethic which permeates the American dream... that a person may advance as far as his [or her]

talents and merit would carry him [her]." Culpepper v. Reynolds Metals Co., 421 F.2d 888, 894 (5th Cir., 1970), quoting Miller v. International Paper Co., 408 F.2d 283, 294 (5th Cir., 1969).

Accordingly, in the first significant case decided by it under Title VII, the United States Supreme Court rejected the argument that the discriminatory impact of a challenged practice should be offset by the absence of a discriminatory purpose leading to its adoption. Griggs v. Duke Power Co., 401 U.S. 424 (1971). Recognizing that the discriminatory effect of a practice would be the same irrespective of the motivation for its adoption, the court reasoned that

> good intent or absence of discriminatory intent does not redeem employment procedures or testing mechanisms that operate as built-in headwinds for minority groups and are unrelated to measuring job capability. Griggs v. Duke Power Co., supra, at 432.

Because "Congress directed the thrust of the act to the consequences of employment practices, not simply the motivation," it is now well established under Title VII that the presence or absence of discriminatory intent is irrelevant to determining the permissability of a challenged practice.

A second important principle which emerges from Griggs is the recognition that:

> ...Congress has placed on the employer the burden of showing that any given requirement must have a manifest relationship to the employment in question. Griggs v. Duke Power Co., supra at 432.

The burden which an employer must bear under Griggs has become known as establishing a business necessity. Thus, when a particular test or selection device is challenged as discriminatory, the employer must demonstrate a precise fit between the test and the job. That is, the challenged criteria must be "shown to bear a demonstrable relationship to successful performance of the jobs for which it is being used." Griggs v. Duke Power Co., supra at 431. In other words, the test or other selection device must measure the person for the job and not in the abstract; in short, the employment practice, test, or selection procedure, whatever its form, must be job related.

The business necessity test, as it has become known, has been expanded and refined since its inception in Griggs v. Duke Power Co., supra. Under the law now existing in several circuits including our

own, an employer must satisfy a two part test in order to establish a business necessity supporting the continued use of a challenged practice:

> The test is whether there exists an overriding legitimate business purpose such that the practice is necessary to the safe and efficient operation of the business; [First], the business purpose must be sufficiently compelling to override any racial impact; the challenged practice must effectively carry out the business purpose it is alleged to serve; and [second], there must be available no acceptable alternative policies and practices which would better accomplish the business purpose advanced, or accomplish it equally well with a lesser differential racial impact. Head v. Timken Roller Bearing, 486 F.2d 870, 879 (6th Cir., 1973), quoting Robinson v. Lorillard Co., 444 F.2d 791, 798 (4th Cir), cert denied 404 U.S. 1006 (1971)

Therefore, under the business necessity test as it exists today for employers in Michigan, a challenged requirement, selection technique or other employment practice must be demonstrated not only necessary to the safe and efficient operation of the business but also to be the sole means for accomplishing that goal.

Finally, Griggs underscores the importance of statistics in assaying the impact of one's employment practices. Not only is the effect rather than the intent of a particular practice determinative, but it is the discriminatory impact of a practice which triggers the employer's obligation to establish a business necessity, justifying the continued use of the practice. In the Griggs setting, for example, it was the adverse impact upon black workers of the company's transfer and assignment criteria which led the Court to inquire whether such indicia were a reasonable measure of job performance:

> If an employment practice which operates to exclude Negroes cannot be shown to be related to job performance, the practice is prohibited. Griggs v. Duke Power Co., supra at 431.

As a result, a statistical breakdown of job classifications by race, sex and otherwise is a useful if not indispensable starting point in making determinations as to the lawfulness of particular selection techniques or other employment practices. Not surprisingly, the Sixth Circuit Court of Appeals has observed that "sta-

tistical evidence is an important tool for placing seemingly inoffensive employment practices in their proper perspective." Senter v. General Motors Corp., 532 F.2d 511, 527 (6th Cir., 1976). Hence, if a statistical survey suggests an underutilization or overconcentration of particular race or sex groups in certain job classifications, an employer is well advised to undertake a careful study of the recruitment procedures, selection techniques, and other employment practices which affect the ultimate decision as to who is awarded those jobs.

Impermissible Practices Illustrated

Once the basic principles which inform the concept of discrimination developed under Title VII are understood, a few examples are helpful to refine and illustrate that concept. For example, an adverse impact triggering the business necessity rule under Title VII (and by analogy under Title IX) is illustrated by a recipient's use of a 5'8" minimum height requirement for applicants to the position of school security guard. Since that requirement would disqualify female, Hispanic and Oriental applicants at a much higher rate than Anglo males (95% of American women would automatically be excluded from consideration), it could withstand attack under Title IX only if it could be demonstrated that persons less than 5'8" tall could not adequately perform the responsibilities of the job and that alternative screening mechanisms could not be devised.

The Griggs case also established the proposition that Title VII, while prospective only, reaches both present and continuing discrimimation and ostensibly neutral practices which perpetuate the effects of past (pre-Act) discrimination. Thus, if past discrimination by a particular school district or in the educational community as a whole had resulted in the virtual exclusion of blacks and women from its administrative positions, reliance solely upon word-of-mouth recruitment to advertise future vacancies in those jobs might violate Title IX, simply by perpetuating the discriminatory vestiges of pre-Act discrimination.

Another principle worthy of illustration is the concept of "equal pay for equal work" initiated by the Equal Pay Act of 1963, incorporated in Title VII and reiterated in the guidelines issued under Title IX [45 C.F.R. § 86.54(b)]. Under all three acts, the controlling test is whether two sex-segregated job classifications involve substantially equal work, on jobs the performance of which requires equal skill, effort, and responsibility. For example, many districts retain the sex segregated classifications of "cleaner" and "custodian." Custodians are virtually all male

and receive a substantially higher wage than cleaners for doing the same or similar unskilled janitorial work. The jobs need not be identical (there may be occasional tasks which custodians perform and cleaners do not and vice versa) in order for a compliance officer to conclude that the payment of higher wages to the custodians violates Title IX and requires the elevation of the wage rate for cleaners.

Like Title VII, the regulations under Title IX specifically permit discrimination on the basis of sex when sex is a "bona fide occupational qualification" [BFOQ] "essential to successful operation of the employment function concerned." 45 C.F.R. §86.61. The EEOC and the Courts have narrowly construed the BFOQ exception under Title VII, in order to preserve the underlying purposes of the act and to prevent the exception from swallowing the rule. Thus, in considering the bona fide occupational qualification defense to a charge of sex discrimination under Title VII, the courts have placed the burden on the employer to prove

> he had reasonable cause to believe, that is a factual basis for believing, that all or substantially all women would be unable to perform safely and efficiently the duties of the job involved. See, Weeks v. Southern Bell Telephone & Telegraph Co., 408 F.2d 228, 235 (5th Cir., 1969).

Consequently, only when sex is the essence of the job [actress, wet nurse] or when notions of privacy dictate the employment of persons of a particular sex [locker room attendant; restroom security guard] is it likely that the BFOQ exception may be successfully resorted to.

The regulations promulgated by the Secretary of HEW under Title IX also incorporate the existing case law under Title VII with respect to the validity of the so-called "sex-plus" classifications. Early in the development of the law under Title VII, it was argued that rules which prevented the employment of women with pre-school age children or prohibited marriage by persons in virtually all-female classifications were not sexually discriminatory. The courts rejected the argument that because all women were not affected by such rules, they did not constitute discrimination on the basis of sex and sex alone; the regulations under Title IX adopt the holding of those cases by specifically forbidding inquiry into an employee's [or applicant's] marital or parental status. 45 C.F.R. §§86.57; 86.60(a).

Divergent Obligations Under Title VII and Title IX

As earlier indicated, the regulations under Title IX do suggest two significant deviations from the law of employment discrimination under Title VII. First, the regulations provide that

> a recipient shall treat pregnancy, childbirth, false pregnancy and recovery therefrom and any temporary disability resulting therefrom as any other temporary disability for all job related purposes...45 C.F.R. § 86.57(c),

A requirement directly contrary to the recent decision of the United States Supreme Court under Title VII. See, General Electric Co. v. Gilbert, ___ U.S. ___, 97 S. Ct. 401 (1976). Although the Supreme Court's decision was based in part upon its view that "an exclusion of pregnancy from a disability benefits plan providing general coverage is not a gender-based discrimination at all" [Id. at 408], it also relied upon several factors peculiar to Title VII: (1) The legislative history of the sex discrimination provisions of Title VII was at best silent and at worst, inimical to the notion that failure to treat pregnancy like any other temporary disability would violate the act [Id. at 412]; (2) The EEOC Guidelines on Discrimination because of Sex, 29 C.F.R. §1604 et seq. (1972), which on the pregnancy question parallel the regulation issued under Title IX, were not promulgated until eight years after the passage of Title VII and flatly contradict the position which the agency had earlier espoused as well as a contrary interpretation of the Wage and Hour Administrator under the Equal Pay Act [Id. at 411-412]; and (3) The EEOC was never authorized by Congress to issue substantive (as opposed to Procedural) regulations for the implementation or interpretation of Title VII [Id. at 410 (footnote 20)].

In contrast, the regulation issued by the Secretary of HEW under Title IX in 1975, was pursuant to express statutory authority granted him one year earlier. See, Education Amendments of 1974, 20 U.S.C. § 1681 (note) (88 stat. 612) (1974). Not only is there nothing in the legislative history of Title IX which undermines that regulation, it was specifically approved by Congress and signed by the President following its promulgation. See, General Electric Co. v. Gilbert, supra at 419 (Brennan, J., dissenting). Consequently, to the extent the Gilbert decision rests upon the legislative history of Title VII and the inconsistency in the administrative interpretations rendered thereunder, it is entirely likely that a different result would be reached (if not compelled) under Title IX.

Second, the Title IX regulations adopt the Department of Labor position rather than the contrary regulations of the EEOC on the lawfulness of employer pension plans which provide equal contributions for men and women but which pay lower monthly benefits to women based upon their longer life expectance. The regulations under Title IX uphold plans which provide for either equal contributions or equal periodic benefits for members of each sex. 45 C.F.R. § 86.56 (b)(2). While the EEOC regulations under Title VII appear to require both equal contributions and equal benefits, the validity of that interpretation was seriously eroded by Gilbert. Nonetheless, the leading decision directly upon the issue indicates a preference for the EEOC's interpretation over that of the Wage and Hour Administrator (Dept. of Labor) on the proper construction of Title VII. Manhart v. City of Los Angeles, 13 FEP Cases 1625, 12 EPD ¶11,257 (9th Cir., 1976). In Manhart, the court required reimbursement to all women employees of a 15% excess contribution required under a retirement plan which made actuarial distinctions solely on the basis of sex; the court expressly declined to pass judgment on the legality of a plan which determines contribution rates based upon a substantial number of actuarially significant characteristics, only one of which is sex (e.g., smoking and drinking habits, normality of weight, prior medical history, family longevity history). Id. at 1632.

## Methods of Insuring Title IX Compliance

As the foregoing should amply evidence, Title IX, like Title VII, is a far better guide as to the practices to avoid than those to adopt. It should be apparent, however, that the non-discrimination provisions of Title IX only encourage reliance upon practices which an employer ought eagerly to adopt anyway; practices which facilitate and assure employment decisions based upon job-related merit and ability. Accordingly, personnel procedures which require advertisement and recruitment among all sources of potentially qualified applicants, which compel meaningful consideration of every individual application (as opposed to blanket disqualification based upon factors which may screen out some potentially well qualified, e.g., minimum height), which assure job assignments and opportunities for transfer and promotion based solely on job-specific qualifications, which provide compensation and reward performance based upon rigorous job analyses and painstaking evaluation of the skills, abilities and experience required, and those which condition any demotion,

discharge or reassignment of responsibility upon an objective, uniformly applied and broad-based judgment, are both administratively sound and legally sufficient, precisely because they treat employees as individuals rather than upon presumed class characteristics.

The obligation which an employer bears to root out over time the continuing effects of its past discriminatory practices should also be reiterated. Discrimination in employment based upon sex, like that grounded upon race, has deep and well entrenched roots in our society, and the vestiges of that discrimination will linger for generations unless affirmative efforts are undertaken to hasten its extirpation. Thus, the regulations under Title IX recognize that recruitment of "...members of the sex so discriminated against" may be necessary "to overcome the effects of such past or present discrimination." 45 CFR § 86.53(a). Likewise, an employer's monitoring of his workforce by job classification ought to reveal areas of adverse impact where discriminatory pre-Act patterns are being perpetuated, and efforts anew to ferret out cultural or sexual bias should be undertaken. Only through this continuing painstaking and often expensive, self-evaluative process, aimed toward the mechanics of employment decisions and constantly measured against the results thereof, can full and satisfactory compliance with the requirements of Title IX ever be assured.

# SEXISM AND THE WOMAN ADMINISTRATOR

Barbara A. Sizemore*

Nancy L. Arnez, brilliant Associate Dean of the School of Education at Howard University, relating her experiences with sexism at a conference on administration, said that she had been asked many times by her colleagues to take notes at meetings and to perform various secretarial functions because she was often the only female present.

Shirley Chisholm in her book, Unbought and Unbossed, says that young women graduates from college are frequently asked only one question when they seek jobs and that is, "Can you type?" She claims that women are herded into jobs as secretaries, librarians, and teachers and discouraged from being managers, lawyers, doctors and members of Congress because they are assumed to be different from men.[1] Mrs. Chisholm makes an astute observation when she says that the cheerful old darky on the plantation and the happy little homemaker are equally stereotypes drawn by prejudice.[2]

But prejudice may be simply a conformity to a value system. Values are the overriding goal statements of a civilization and Wheelis says there are institutional values and instrumental values. He defines institutional values as those which are derived from the activities associated with myth, mores and status. Wheelis says that such values do not refer to, but transcend the evidence at hand. They claim absolute status and immunity to change, though relative to the culture that supports them. He says the final authority of such values is force. Instrumental values, on the other hand, are relative to the state of empirical knowledge at any given time and change as that knowledge is enlarged. The final authority of such values is reason.[3]

In our culture the institutional values are related to the dilemma created by the disparity between our political ideology and the economic paradigm. The political ideology as expressed in the American Creed, the Constitution and the Declaration of Independence stresses the idea that all men are created equal in the eyes of God with certain inalienable rights and liberties. The economic paradigm is a contrarily interdependent competitive model which says that if A wins, B loses.[4]

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To make this clearer, use Sol Tax' formula A over B, (A/B) and let A represent groups with power and B represent groups with no power. Then let A have power over B.[5] Let the institutional values be white European superiority, male superiority and the superiority of people with money and you have produced the ascription continuum which determines who the winners will be.[6] Contrary to the popular belief that our culture is achievement oriented, the achievement orientation is skewed in one direction. Actually, the economic paradigm dictates the necessity for losers (the unemployed). The relevant question is not whether or not there will be unemployment, but rather who will the unemployed be? The ascription continuum is based on race, class and sex. The highest order human being is the white man of European descent with money and the lowest is the black woman with no money.

The civil rights movement, the union movement and the women's liberation movement have all been struggles for justice. John Rawls in his powerful book, A Theory of Justice, discusses the two principles of justice. First: Each person is to have an equal right to the most extensive basic liberty compatible with a similar liberty for others. Second: Social and economic inequalities are to be arranged so that they are both reasonably expected to be to everyone's advantage, and attached to positions and offices open to all.[7] There are, as Rawls points out, two ambiguous phrases in the second principle, namely "everyone's advantage" and "open to all." The second principle applies to the distribution of income and wealth and to the design of organizations that make use of differences in authority and responsibility or chains of command. While the distribution of wealth need not be equal, according to Rawls, it must be to everyone's advantage, and at the same time, positions of authority and offices of command must be accessible to all. Rawls goes on to say that this is accomplished by holding positions open and subject to this constraint, arranging social and economic inequalities so that everyone benefits. The basic and fundamental problem is that the decision-makers are from one group and the state is captured by the corporate structure.[8]

Suzanne Howard reports that sex typing of occupations occurs in all societies. Some occupations are known as "male" and others as "female," and some are not assigned to one sex or the other. She states that only 10 percent of American occupations are held by both men and women, the remainder are filled predominantly by men or women.[9] Howard argues that men rank first in the ranking of the sexes and they get the first ranking jobs. Women rank second and lowest and get the second and lowest ranking jobs. Additionally, she shows that while men are making inroads into female

occupations, women are not making the same progress with regard to male occupations.[10]

Howard reports that the majority of the teaching force is composed of women, yet they constitute only 13.5 percent of the nation's principals, down from 37 percent in 1960. Of the 13,037 superintendents only .1 percent are female, a decline from 90 to 65 in the past decade. A 1970 survey of superintendents, sponsored by the American Association of School Administrators (AASA) revealed that of all the largest school districts in the United States not one was headed by a woman. Since that time I have been hired and fired, and two other females now hold the reins in the next biggest districts. It is in the small rural districts that one finds the largest proportion of female superintendents, and even here they account for a meager 8.5 percent.[11]

Howard shows that, even in the realm where women predominate, the ratio of women elementary principals has been diminishing in the last 20 years. In recent years women have almost been eliminated entirely from public secondary school administration. Between 1950-51 and 1961-62 the 12 percent women junior high and 6 percent senior high principals sank to 3.68 percent for all secondary schools. Today only 2.9 percent of the junior high principals and 1.4 percent of the senior high principals are women. Howard clearly demonstrates that women, who constitute a majority of the public education teaching profession, are denied equal status, pay and opportunity for advancement and rank lower than men on the continuum of desirability as educational leaders.[12] My case is an example.

The Black woman in administration is subject to much of the discrimination possible in our culture: race, sex and poverty. Her opposition is often composed of her own race and sex. Shirley Chisholm puts it this way:

> There are 435 members of the House of Representatives and 417 are white males. Ten of the others are women and nine are black. I belong to both of these minorities, which makes it add up right. That makes me a celebrity, a kind of side show attraction. I was the first American citizen to be elected to Congress in spite of the double drawbacks of being female and having skin darkened by melanin.
>
> When you put it that way, it sounds like a foolish reason for fame. In a just and free society it would be foolish. That I am a national figure because I was the first person in 192 years to be at once a Congressman, black and a woman proves, I would think, that our society is not yet either just or free.[13]

Ms. Chisholm posits that women although a majority of the population are treated like a minority and the prejudice against them is so widespread that most persons do not yet realize it...even women. She says:

> They even accept being paid less for doing the same work as a man. They are as quick as any male to condemn a woman who ventures outside the limits of the role men have assigned to females: that of toil and drudge.
>
> Of my two "handicaps," being female put many more obstacles in my path than being black.[14]

In December, 1972 at the invitation of Paul Salmon, Executive Secretary of the American Association of School Administrators (AASA), I came to Washinton to work for that organization as Associate Secretary. The organization represents most of the nation's superintendents and is nearly all white and all male. The Executive Committee which functions somewhat like a board of directors is all male and all white. As Associate Secretary I learned that much decision-making takes place at their private meetings and parties. Kate Millett considers this phenomenon in her work, Sexual Politics. She says that sexual segregation is prevalent in every patriarchy. "Nearly every powerful circle in contemporary patriarchy is a men's group." It is noted that men form groups of their own on every level and women's groups are typically auxiliary in character.[15]

But even the formal meetings of this all male and all white group were spiced with sexy jokes and drinking. This is not a comfortable setting for a woman, who is generally the butt of such jokes. Consequently, women try to avoid these affairs. But the avoidance costs participation in the decision-making.

As a result of my presence in AASA, business meetings were considerably cleaner, I was advised, but it was clear that at times the men were uncomfortable and constrained. Millet explains this in this way:

> In sexually segregated situations the distinctive quality of culturally enforced temperament becomes very vivid. This is particularly true of those exclusively masculine organizations which anthropology generally refers to as men's house institutions. The men's house is a fortress of patriarchal association and emotion. Men's houses in preliterate society strengthen masculine communal experience through dances,

> gossip, hospitality, recreation and religious ceremony. They are also the arsenals of male weaponry.[16]

Generally, because I do not drink or smoke, I had the feeling that I was a general drag on the whole thing. Nevertheless, I was included in all discussions and a participant. Women must force themselves to change these kinds of circumstances.

In August, 1973 I was selected as Superintendent of the District of Columbia Public Schools by a vote of 7-3 with one abstention from an 11 member Board of Education (BOE) created by the Congress for the nation's capital in 1968 as the first step in the concession of home rule which came in its present modified form on January 2, 1975. Of the seven votes cast for me, six were black, one of which was that of the black male President of the BOE and one was white, a male. Of these four were male and three were females, all of whom were black. Of the three votes against my selection, all were white, two male and one female, the Vice President of the BOE. The abstention was a black female. The white female Vice President sent out a letter to her constituency explaining her opposition by describing me as inept, unqualified and incompetent. Throughout my superintendency while she was on the BOE she continued to denigrate female administrators, white and black, and to try to secure their dismissal. In her letter to her constituency the Vice President said that I was without experience in the managerial aspects of a large school system, yet she supported a candidate, a black male, who had never had any experience in a high school district. She castigated a white female assistant superintendent for incompetency never taking into account that that particular assistant superintendent was responsible for twice as many schools as any of the male superintendents.

The white female Vice President resigned from the Board to run for the City Coucil and was defeated, but she is still cited by the print media when it wishes to attack the school system, which is frequently. The media's attacks against my superintendency began from Day #1 and increased as time went on. The Washington Post removed a black reporter who evidently was not biased enough against us and replaced him with a white female. The Washington Star assigned a white female to me and after I was fired assigned a black male to the new male acting superintendent whom the media is now touting as the "perfect man."

One month after my selection five members' seats were up for election. Two of my supporters did not run for reelection and one resigned because of illness. Of the seven supporters, I lost two in that

election which whittled my support to five. This board took office in January, 1974. This was my second board. In July, 1974 three board members, one black, the BOE President, two white, one a male and the other the white female Vice President, resigned to run for the City Council and a fourth, a black female, left because her agency was transferred to the D. C. Government and under the home rule legislation no one who worked for the D.C. Government could serve on the BOE. Their departure created my third board which was composed of seven members, five of whom were opposed to my superintendency. Of these five, three were black and two of these blacks were female. In November, 1974 another election was held to replace the departed members. My fourth board was composed of 11 members split 7-4 against my superintendency. Of the seven member majority which fired me, four were white constituting all of the whites on the BOE and three were black, two of whom were female. Of the four supporters, all were black, two male and two female.

Most superintendents say that it takes almost a year to learn to work with a board, but, as you can see, since mine was constantly changing this was nearly impossible. Additionally, requests were made of me that were made of no other superintendent. In fact, after my selection, my second board tried to prevent me from accomplishing any of the goals set forth in the 120 Day Report which is required of each new superintendent by Board Rules. It is the superintendent's plan for the programs of the D. C. Public Schools (DCPS). Indeed, the BOE did not approve the 120 Day Report until May 30, 1974 although it had been submitted to it on March 8. Two months after my appointment, at the Community Board of Education meeting held at Wilson Senior High School in Ward Three on December 6, 1973 the white liberal female Vice President of the BOE passed a note to the sole conservative white Board member who happened to be chairing the meeting. The note read as follows: "I am here in the name of white solidarity. If there is anything coming up for which you need my support please do it soon as I have to leave early."[17] Her efforts at consolidating the whites against me failed at first but ultimately became successful as the whites on the BOE tried to divert funds from the school treasury to private white organizations, a move which I vigorously opposed.[18]

One of these organizations, a citizens group, led by a white female whose husband published a periodical, and who, herself, was reputed to be a relative of the owners of The Chicago Tribune, launched an attack against my superintendency and sources close to the organization which she heads said that she influenced the editors ot the major publications to accelerate

their criticism and to prevent any opposing views from being published. The Chicago Tribune published two editorials criticizing my stand against racism[19] and refused to publish a letter sent by Barbara Lett Simmons, DC BOE member clarifying some glaring errors the paper made in its interpretation of events which had occured in Washington. Likewise, the editor of The Washington Post refused to print letters from my office in response to their completely distorted report of the situation created by the BOE's decision to bring charges against me for inefficiency. When Ms. Simmons complained to the editor, he consented to print her letter should she choose to write one. But when Ms. Simmons sent in her letter, the editor printed it and also published that same day an editorial criticizing Ms. Simmons' response.[20]

The Washington Post tried to picture me as a racist and conducted a survey which revealed widespread community support for my superintendency.[21] However, the mobilization of this support was difficult because of the power vacuum in the District created by the Congress and the fact that, as a female, I was not privy to the male dominated decision-making cliques which run Washington. Moreover, my bold criticism of the Congress was something not dared in the District and completely taboo.

Therefore, when the Committee of the Whole on Personnel decided to bring the seventeen charges against me on May 31, 1975 in violation of its own rules, it did so because the media had turned against me in response to my speech delivered on April 4, 1975 at the African Heritage Studies Association wherein I exposed the colonial position of the nation's capital and the racism behind its proposition of the home rule.[22] I do believe that had I been more willing to keep silent on the race issue, my sex would not have been such an obstacle in keeping the superintendency. It would have continued to be an obstacle in accomplishing the goals, however.

The DC BOE charged that I had neglected or been inattentive to my duties as superintendent and failed to comply with the directives and policies of the BOE. One specification was the failure to provide a plan for equalization of the schools. The DCPS had been under court mandate to equalize expenditures in its elementary schools since May 25, 1971. Four short lived superintendents handled bits and pieces of the administrative approach to compliance. None adequately stopped disruptions from mechanically redistributing teachers. Growing teacher attrition and declining student achievement continued. Consequently, I told the BOE on November 14, 1973, one month after my appointment that we would try to bring to the board a different plan to equalize the schools. We were

unable to do this because of a multitude of problems, not the least of which was the opposition of the BOE itself. The presiding administrative law officer ruled that I should have done what I said I would do. He refused to take into account the board's own failure to act. Later intelligence from board side and the officer's own assistants indicated that he was looking for evidence against me from the very beginning. No other superintendent had been found inefficient for failing to do what he said he would try to do. The BOE charged me with failing to submit safety reports, finance and personnel reports. No other superintendent had ever submitted any. I was the first to ever submit personnel reports, and I produced more finance reports than the previous two superintendents.

The most unfair of the charges were the four which grew out of a committee meeting held by the opposition. This committee declared that it needed answers to questions which we had already answered and which it admitted that it did not need. It asked us to set up a committee to make decisions about the expenditure of funds which did not exist. The administrative hearing officer held that we should have done as instructed even though the need for such actions was unnecessary and even though the BOE had been so instructed. No male superintendent had been so treated. Barbara Lett Simmons, DC BOE member, consistently acknowledged the sexism manifest in the BOE actions and procedures.

The first administrative law judge ruled in my favor against the BOE. The BOE then fired him and hired a new hearing officer who ruled in a political way rather than a just way. I want to appeal his decision. The struggle for justice must continue and if women want to be treated equally and in a just way they must be eternally vigilant and militant about their liberation. And this is my answer to the question: Why do you struggle? Why didn't you take your money and resign?

On October 9, 1975 the DC BOE held a special meeting to consider emergency matters at 9:00 a.m. The meeting was attended by all members of the DC BOE. The BOE received and considered the report from its Committee of the Whole on Personnel. Acting upon the recommendations of this committee the BOE adopted the findings of fact and conclusions of law as submitted by the administrative hearing officer. It then voted to terminate the contract of employment between the BOE and myself and removed me from office of the superintendent immediately.

The letter to me said, "...you are hereby given notice that as of 10:30 a.m. today, October 9, 1975, you are removed from the office of the superintendent of schools and relieved of all the duties, responsi-

bilities and authority of that office for cause. You are also given notice hereby that the contract of employment between you and the BOE has been terminated for cause. Therefore, as of the close of business on this date, all salary, allowances, rights, and benefits which have inured to you under said contract and in said office shall be terminated."[23] The DC BOE paid me no money for my contract and gave me no time to seek employment. This has never been done to a male.

Simone de Beauvoir challenges women to free themselves from the feeling that they exist only in men. She speaks the following:

> The men that we call great are those who--in one way or another--have taken the weight of the world upon their shoulders; they have done better or worse, they have succeeded in re-creating it or they have gone down; but first they have assumed that enormous burden. This is what no woman has ever done, what none has ever been able to do. To regard the universe as one's own, to consider oneself to blame for its faults and to glory in its progress, one must belong to the caste of the privileged; it is for those alone who are in command to justify the universe by changing it, by thinking about it, by revealing it; they alone can recognize themselves in it and endeavor to make their mark upon it.[24]

For me I shall continue to try to make my mark upon this world.

In protesting against the sex bias I have polarized my support among my race. For there are black women who believe that we should walk two feet behind our men and sacrifice our being for the elevation of male superiority. One famous black child psychiatrist advises us to so do because she argues that never in the history of mankind has a race progressed any farther than its male. Because of my ourspoken position against male, white European and class superiority, I have been called a lesbian by males, a racist by whites, an intellectual by the poor and an elitist by the rich. In spite of this, I will continue to struggle for justice, not only for women, but for blacks and other excluded minorities and for the poor. It will not be easy as Shirley Chisholm says:

> One distressing thing is the way men react to women who assert their equality: their ultimate weapon is to call them unfeminine. They think she is anti-male; they even whisper that she's

> probably a lesbian, a tactic some of the Women's liberation Front have encountered. I am not anti-male any more than I am anti-white, and I am not anti-white, because I understand that white people, like black ones are victims of a racist society. They are products of their time and place. It's the same with men. This society is as anti-woman as it is anti-black. It has forced males to adopt discriminatory attitudes toward females. Getting rid of them will be very hard for most men--too hard, for many of them.[25]

Women today must accept de Beauvoir's challenge. In 1972 Rosalind Loring and Theodora Wells predicted the rapid ratification of the Equal Rights Amendment (ERA).[26] We now see it dying on the limb. It is completely unreasonable to expect men to relinquish their advantages in the present unjust arrangement. Females who want to be housewives and who fear the world of work are threatened by females who want to be free. Their entry into the fray should only serve to heighten our effort. Frederick Douglass said that power concedes nothing without a demand. We must continue to demand our inalienable rights as human beings who happen to be women.

## Notes

[1]Shirley Chisholm, Unbought and Unbossed (Boston: Houghton Mifflin Co., 1970), p. 163.

[2]Ibid.

[3]Allen Wheelis, The Quest for Identity (New York: Norton, 1958), pp. 179-182.

[4]Morton Deutsch, "Cooperation and Trust: Some Theoretical Notes," Interpersonal Dynamics, ed. Warren G. Bennis, Edgar H. Schein, David E. Berlew and Fred I. Steele (Homewood, Illinois: Dorsey, 1964), p. 566.

[5]Sol Tax, "The Freedom to Make Mistakes," Documentary History of the Fox Project, ed. Fred Gearing, Robert McNetting and Lisa Peattie (Chicago: University of Chicago Press, 1960), pp. 245-250.

[6]Barbara A. Sizemore, "Social Science and Education for the Black Identity," Black Self-Concept, ed. James A. Banks and Jean D. Grambs (New York: McGraw-Hill, 1972), pp. 141-167.

[7]John Rawls, A Theory of Justice (Cambridge, Massachusetts: Belknap Press, Harvard University, 1971), pp. 60-65.

[8]John Kenneth Galbraith, "Power and the Useful Economist," Presidential Address delivered at the American Economic Association's 85th Annual Meeting (Toronto, Canada: December 29, 1972), p. 18.

[9]Suzanne Howard, Why Aren't Women Administering Our Schools? (Washington, D.C.: National Council of Administrative Women in Education, 1975)

[10]Ibid., p.7.

[11]Howard, op. cit., p. 9.

[12]Howard, op. cit., p. 5.

[13]Chisholm, op. cit., p. xi.

[14]Chisholm, op. cit., p. xii.

[15]Kate Millett, Sexual Politics (Garden City, New York: Doubleday, 1970), p. 48.

[16]Millett, op. cit., p. 48.

[17]Barbara A. Sizemore, "Education: Is Accomodation Enough?" The Journal of Negro Education, XLIV (Summer 1975), 239.

[18]Ibid., pp.233-246.

[19]The Chicago Tribune

[20]The Washington Post

[21]Ibid., May 11, 1975.

[22]Sizemore, op. cit.

[23]Letter to Barbara A. Sizemore from Dwight Cropp, October 9, 1975.

[24]Simone de Beauvoir, The Second Sex (New York: Alfred A. Knopf, 1957), p. 713.

[25]Chisholm, op. cit., p. 168.

[26]Rosalind Loring and Theodora Wells, Breakthrough: Women into Management (New York: Van Nostrand Reinhold Co., 1972), p. 167.

# III. APPENDIX

# APPENDIX

## EXCERPTS FROM THE FINAL TITLE IX REGULATION IMPLEMENTING EDUCATION AMENDMENTS OF 1972 PROHIBITING SEX DISCRIMINATION IN EDUCATION

### PART 86—NONDISCRIMINATION ON THE BASIS OF SEX UNDER FEDERALLY ASSISTED EDUCATION PROGRAMS AND ACTIVITIES

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86.62–86.70 [Reserved].

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**Subpart A—Introduction**

**§ 86.1 Purpose and effective date.**

The purpose of this part is to effectuate title IX of the Education Amendments of 1972, as amended by Pub. L. 93–568, 88 Stat. 1855 (except sections 904 and 906 of those Amendments) which is designed to eliminate (with certain exceptions) discrimination on the basis of sex in any education program or activity receiving Federal financial assistance, whether or not such program or activity is offered or sponsored by an educational institution as defined in this part. This part is also intended to effectuate section 844 of the Education Amendments of 1974, Pub. L. 93–380, 88 Stat. 484. The effective date of this part shall be July 21, 1975.

(Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374; 20 U.S.C. 1681, 1682, as amended by Pub. L. 93–568, 88 Stat. 1855, and Sec. 844, Education Amendments of 1974, 88 Stat. 484, Pub. L. 93–380)

**§ 86.2 Definitions.**

As used in this part, the term—

(a) *"Title IX"* means title IX of the Education Amendments of 1972, Pub. L. 92–318, as amended by section 3 of Pub. L. 93–568, 88 Stat. 1855, except §§ 904 and 906 thereof; 20 U.S.C. §§ 1681, 1682, 1683, 1685, 1686.

(b) *"Department"* means the Department of Health, Education, and Welfare.

(c) *"Secretary"* means the Secretary of Health, Education, and Welfare.

(d) *"Director"* means the Director of the Office for Civil Rights of the Department.

(e) *"Reviewing Authority"* means that component of the Department delegated authority by the Secretary to appoint, and to review the decisions of, administrative law judges in cases arising under this Part.

(f) *"Administrative law judge"* means a person appointed by the reviewing authority to preside over a hearing held under this Part.

(g) *"Federal financial assistance"* means any of the following, when authorized or extended under a law administered by the Department:

(1) A grant or loan of Federal financial assistance, including funds made available for:

(i) The acquisition, construction, renovation, restoration, or repair of a building or facility or any portion thereof; and

(ii) Scholarships, loans, grants, wages or other funds extended to any entity for payment to or on behalf of students admitted to that entity, or extended directly to such students for payment to that entity.

(2) A grant of Federal real or personal property or any interest therein, including surplus property, and the proceeds of the sale or transfer of such property, if the Federal share of the fair market value of the property is not, upon such sale or transfer, properly accounted for to the Federal Government.

(3) Provision of the services of Federal personnel.

(4) Sale or lease of Federal property or any interest therein at nominal consideration, or at consideration reduced for the purpose of assisting the recipient or in recognition of public interest to be served thereby, or permission to use Federal property or any interest therein without consideration.

(5) Any other contract, agreement, or arrangement which has as one of its purposes the provision of assistance to any education program or activity, except a contract of insurance or guaranty.

(h) *"Recipient"* means any State or political subdivision thereof, or any instrumentality of a State or political subdivision thereof, any public or private agency, institution, or organization, or other entity, or any person, to whom Federal financial assistance is extended directly or through another recipient and which operates an education program or activity which receives or benefits from such assistance, including any subunit, successor, assignee, or transferee thereof.

(i) *"Applicant"* means one who submits an application, request, or plan required to be approved by a Department official, or by a recipient, as a condition to becoming a recipient.

(j) *"Educational institution"* means a local educational agency (L.E.A.) as defined by section 801(f) of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 881), a preschool, a private elementary or secondary school, or an applicant or recipient of the type defined by paragraph (k), (l), (m), or (n) of this section.

(k) *"Institution of graduate higher education"* means an institution which:

(1) Offers academic study beyond the bachelor of arts or bachelor of science degree, whether or not leading to a certificate of any higher degree in the liberal arts and sciences; or

(2) Awards any degree in a professional field beyond the first professional degree (regardless of whether the first professional degree in such field is awarded by an institution of undergraduate higher education or professional education); or

(3) Awards no degree and offers no further academic study, but operates ordinarily for the purpose of facilitating research by persons who have received the highest graduate degree in any field of study.

(l) *"Institution of undergraduate higher education"* means:

(1) An institution offering at least two but less than four years of college level study beyond the high school level, leading to a diploma or an associate degree, or wholly or principally creditable toward a baccalaureate degree; or

(2) An institution offering academic study leading to a baccalaureate degree; or

(3) An agency or body which certifies credentials or offers degrees, but which may or may not offer academic study.

(m) *"Institution of professional education"* means an institution (except any institution of undergraduate higher education) which offers a program of academic study that leads to a first professional degree in a field for which there is a national specialized accrediting agency recognized by the United States Commissioner of Education.

(n) *"Institution of vocational education"* means a school or institution (except an institution of professional or graduate or undergraduate higher education) which has as its primary purpose preparation of students to pursue a technical, skilled, or semiskilled occupation or trade, or to pursue study in a technical field, whether or not the school or institution offers certificates, diplomas, or degrees and whether or not it offers fulltime study.

(o) *"Administratively separate unit"* means a school, department or college of an educational institution (other than a local educational agency) admission to which is independent of admission to any other component of such institution.

(p) *"Admission"* means selection for part-time, full-time, special, associate, transfer, exchange, or any other enrollment, membership, or matriculation in or at an education program or activity operated by a recipient.

(q) *"Student"* means a person who has gained admission.

(r) *"Transition plan"* means a plan subject to the approval of the United States Commissioner of Education pursuant to section 901(a)(2) of the Education Amendments of 1972, under which an educational institution operates in making the transition from being an educational institution which admits only students of one sex to being one which admits students of both sexes without discrimination.

(Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374; 20 U.S.C. 1681, 1682)

**§ 86.3 Remedial and affirmative action and self-evaluation.**

(a) *Remedial action.* If the Director finds that a recipient has discriminated against persons on the basis of sex in an education program or activity, such recipient shall take such remedial action as the Director deems necessary to overcome the effects of such discrimination.

(b) *Affirmative action.* In the absence of a finding of discrimination on the basis of sex in an education program or activity, a recipient may take affirmative action to overcome the effects of conditions which resulted in limited participation therein by persons of a particular sex. Nothing herein shall be interpreted to alter any affirmative action obligations which a recipient may have under Executive Order 11246.

(c) *Self-evaluation.* Each recipient education institution shall, within one year of the effective date of this part:

(i) Evaluate, in terms of the requirements of this part, its current policies and practices and the effects thereof concerning admission of students, treatment of students, and employment of both academic and non-academic personnel working in connection with the recipient's education program or activity;

(ii) Modify any of these policies and practices which do not or may not meet the requirements of this part; and

(iii) Take appropriate remedial steps to eliminate the effects of any discrimination which resulted or may have resulted from adherence to these policies and practices.

(d) *Availability of self-evaluation and related materials.* Recipients shall maintain on file for at least three years following completion of the evaluation required under paragraph (c) of this section, and shall provide to the Director upon request, a description of any modifications made pursuant to subparagraph (c)(ii) and of any remedial steps taken pursuant to subparagraph (c)(iii).

(Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374; 20 U.S.C. 1681, 1682)

**§ 86.4 Assurance required.**

(a) *General.* Every application for Federal financial assistance for any education program or activity shall as condition of its approval contain or be accompanied by an assurance from the applicant or recipient, satisfactory to the Director, that each education program or activity operated by the applicant or recipient and to which this part applies will be operated in compliance with this part. An assurance of compliance with this part shall not be satisfactory to the Director if the applicant or recipient to whom such assurance applies fails to commit itself to take whatever remedial action is necessary in accordance with § 86.3(a) to eliminate existing discrimination on the basis of sex or to eliminate the effects of past discrimination whether occurring prior or subsequent to the submission to the Director of such assurance.

(b) *Duration of obligation.* (1) In the case of Federal financial assistance extended to provide real property or structures thereon, such assurance shall obligate the recipient or, in the case of a subsequent transfer, the transferee, for the period during which the real property or structures are used to provide an education program or activity.

(2) In the case of Federal financial assistance extended to provide personal property, such assurance shall obligate the recipient for the period during which it retains ownership or possession of the property.

(3) In all other cases such assurance shall obligate the recipient for the period during which Federal financial assistance is extended.

(c) *Form.* The Director will specify the form of the assurances required by paragraph (a) of this section and the extent to which such assurances will be required of the applicant's or recipient's subgrantees, contractors, subcontractors, transferees, or successors in interest.

(Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374; 20 U.S.C. 1681, 1682)

**§ 86.5 Transfers of property.**

If a recipient sells or otherwise transfers property financed in whole or in part with Federal financial assistance to a transferee which operates any education program or activity, and the Federal share of the fair market value of the property is not upon such sale or transfer properly accounted for to the Federal Government both the transferor and the transferee shall be deemed to be recipients, subject to the provisions of Subpart B.

(Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374; 20 U.S.C. 1681, 1682)

**§ 86.6 Effect of other requirements.**

(a) *Effect of other Federal provisions.* The obligations imposed by this part are independent of, and do not alter, obligations not to discriminate on the basis of sex imposed by Executive Order 11246, as amended; sections 799A and 845 of the Public Health Service Act (42 U.S.C. 295h–9 and 298b–2); Title VII of the Civil Rights Act of 1964 (42 U.S.C. 2000e et seq.); the Equal Pay Act (29 U.S.C. 206 and 206(d)); and any other Act of Congress or Federal regulation.

(Secs. 901, 902, 905, Education Amendments of 1972, 86 Stat. 373, 374, 375; 20 U.S.C. 1681, 1682, 1685)

(b) *Effect of State or local law or other requirements.* The obligation to comply with this part is not obviated or alleviated by any State or local law or other requirement which would render any applicant or student ineligible, or limit the eligibility of any applicant or student, on the basis of sex, to practice any occupation or profession.

(c) *Effect of rules or regulations of private organizations.* The obligation to comply with this part is not obviated or alleviated by any rule or regulation of any organization, club, athletic or other league, or association which would render any applicant or student ineligible to participate or limit the eligibility or participation of any applicant or student, on the basis of sex, in any education program or activity operated by a recipient and which receives or benefits from Federal financial assistance.

(Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374; 20 U.S.C. 1681, 1682)

**§ 86.7 Effect of employment opportunities.**

The obligation to comply with this Part is not obviated or alleviated because employment opportunities in any occupation or profession are or may be more limited for members of one sex than for members of the other sex.

(Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374; 20 U.S.C. 1681, 1682)

**§ 86.8 Designation of responsible employee and adoption of grievance procedures.**

(a) *Designation of responsible employee.* Each recipient shall designate at least one employee to coordinate its efforts to comply with and carry out its responsibilities under this part, including any investigation of any complaint communicated to such recipient alleging its noncompliance with this part or alleging any actions which would be prohibited by this part. The recipient shall

notify all its students and employees of the name, office address and telephone number of the employee or employees appointed pursuant to this paragraph.

(b) *Complaint procedure of recipient.* A recipient shall adopt and publish grievance procedures providing for prompt and equitable resolution of student and employee complaints alleging any action which would be prohibited by this part.

(Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374; 20 U.S.C. 1681, 1682)

**§ 86.9 Dissemination of policy.**

(a) *Notification of policy.* (1) Each recipient shall implement specific and continuing steps to notify applicants for admission and employment, students and parents of elementary and secondary school students, employees, sources of referral of applicants for admission and employment, and all unions or professional organizations holding collective bargaining or professional agreements with the recipient, that it does not discriminate on the basis of sex in the educational programs or activities which it operates, and that is required by title IX and this part not to discriminate in such a manner. Such notification shall contain such information, and be made in such manner, as the Director finds necessary to apprise such persons of the protections against discrimination assured them by title IX and this part, but shall state at least that the requirement not to discriminate in education programs and activities extends to employment therein, and to admission thereto unless Subpart C does not apply to the recipient, and that inquiries concerning the application of title IX and this part to such recipient may be referred to the employee designated pursuant to § 86.8, or to the Director.

(2) Each recipient shall make the initial notification required by paragraph (a)(1) of this section within 90 days of the effective date of this part or of the date this part first applies to such recipient, whichever comes later, which notification shall include publication in: (i) Local newspapers; (ii) newspapers and magazines operated by such recipient or by student, alumnae, or alumni groups for or in connection with such recipient; and (iii) memoranda or other written communications distributed to every student and employee of such recipient.

(b) *Publications.* (1) Each recipient shall prominently include a statement of the policy described in paragraph (a) of this section in each announcement, bulletin, catalog, or application form which it makes available to any person of a type described in paragraph (a) of this section, or which is otherwise used in connection with the recruitment of students or employees.

(2) A recipient shall not use or distribute a publication of the type described in this paragraph which suggests, by text or illustration, that such recipient treats applicants, students, or employees differently on the basis of sex except as such treatment is permitted by this part.

(c) *Distribution.* Each recipient shall distribute without discrimination on the basis of sex each publication described in paragraph (b) of this section, and shall apprise each of its admission and employment recruitment representatives of the policy of nondiscrimination described in paragraph (a) of this section, and require such representatives to adhere to such policy.

(Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374; 20 U.S.C. 1681, 1682)

**Subpart B—Coverage**

**§ 86.11 Application.**

Except as provided in this subpart, this Part 86 applies to every recipient and to each education program or activity operated by such recipient which receives or benefits from Federal financial assistance.

**§ 86.12 Educational institutions controlled by religious organizations.**

(a) *Application.* This part does not apply to an educational institution which is controlled by a religious organization to the extent application of this part would not be consistent with the religious tenets of such organization.

(b) *Exemption.* An educational institution which wishes to claim the exemption set forth in paragraph (a) of this section, shall do so by submitting in writing to the Director a statement by the highest ranking official of the institution, identifying the provisions of this part which conflict with a specific tenet of the religious organization.

(Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374; 20 U.S.C. 1681, 1682)

**§ 86.13 Military and merchant marine educational institutions.**

This part does not apply to an educational institution whose primary purpose is the training of individuals for a military service of the United States or for the merchant marine.

(Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374; 20 U.S.C. 1681, 1682)

**§ 86.14 Membership practices of certain organizations.**

(a) *Social fraternities and sororities.* This part does not apply to the membership practices of social fraternities and sororities which are exempt from taxation under Section 501(a) of the Internal Revenue Code of 1954, the active membership of which consists primarily of students in attendance at institutions of higher education.

(b) *YMCA, YWCA, Girl Scouts, Boy Scouts and Camp Fire Girls.* This part does not apply to the membership practices of the Young Men's Christian Association, the Young Women's Christian Association, the Girl Scouts, the Boy Scouts and Camp Fire Girls.

(c) *Voluntary youth service organizations.* This part does not apply to the membership practices of voluntary youth service organizations which are exempt from taxation under Section 501(a) of the Internal Revenue Code of 1954 and the membership of which has been traditionally limited to members of one sex and principally to persons of less than nineteen years of age.

(Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374; 20 U.S.C. 1681, 1682; Sec. 3(a) of P.L. 93-568, 88 Stat. 1862, amending Sec. 901)

**§ 86.15 Admissions.**

(a) Admissions to educational institutions prior to June 24, 1973, are not covered by this part.

(b) *Administratively separate units.* For the purposes only of this section, § 86.16, § 86.17, and Subpart C, each administratively separate unit shall be deemed to be an educational institution.

(c) *Application of Subpart C.* Except as provided in paragraphs (d) and (e) of this section, Subpart C applies to each recipient. A recipient to which Subpart C applies shall not discriminate on the basis of sex in admission or recruitment in violation of that subpart.

(d) *Educational institutions.* Except as provided in paragraph (e) of this section as to recipients which are educational institutions, Subpart C applies only to institutions of vocational education, professional education, graduate higher education, and public institutions of undergraduate higher education.

(e) *Public institutions of undergraduate higher education.* Subpart C does not apply to any public institution of undergraduate higher education which traditionally and continually from its establishment has had a policy of admitting only students of one sex.

(Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374; 20 U.S.C. 1681, 1682)

**§ 86.16 Educational institutions eligible to submit transition plans.**

(a) *Application.* This section applies to each educational institution to which Subpart C applies which:

(1) Admitted only students of one sex as regular students as of June 23, 1972; or

(2) Admitted only students of one sex as regular students as of June 23, 1965, but thereafter admitted as regular students, students of the sex not admitted prior to June 23, 1965.

(b) *Provision for transition plans.* An educational institution to which this section applies shall not discriminate on the basis of sex in admission or recruitment in violation of Subpart C unless it is carrying out a transition plan approved by the United States Commissioner of Education as described in § 86.17, which plan provides for the elimination of such discrimination by the earliest practicable date but in no event later than June 23, 1979.

(Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374; 20 U.S.C. 1681, 1682)

**§ 86.17 Transition plans.**

(a) *Submission of plans.* An institution to which § 86.16 applies and which is composed of more than one administratively separate unit may submit either a single transition plan applicable to all such units, or a separate transition plan applicable to each such unit.

(b) *Content of plans.* In order to be approved by the United States Commissioner of Education, a transition plan shall:

(1) State the name, address, and Federal Interagency Committee on Education (FICE) Code of the educational institution submitting such plan, the administratively separate units to which the plan is applicable, and the name, address, and telephone number of the person to whom questions concerning the plan may be addressed. The person who submits the plan shall be the chief administrator or president of the institution, or another individual legally authorized to bind the institution to all actions set forth in the plan.

(2) State whether the educational institution or administratively separate unit admits students of both sexes, as regular students and, if so, when it began to do so.

(3) Identify and describe with respect to the educational institution or administratively separate unit any obstacles to admitting students without discrimination on the basis of sex.

(4) Describe in detail the steps necessary to eliminate as soon as practicable each obstacle so identified and indicate the schedule for taking these steps and the individual directly responsible for their implementation.

(5) Include estimates of the number of students, by sex, expected to apply for, be admitted to, and enter each class during the period covered by the plan.

(c) *Nondiscrimination.* No policy or practice of a recipient to which § 86.16 applies shall result in treatment of applicants to or students of such recipient in violation of Subpart C unless such treatment is necessitated by an obstacle identified in paragraph (b)(3) of this section and a schedule for eliminating that obstacle has been provided as required by paragraph (b)(4) of this section.

(d) *Effects of past exclusion.* To overcome the effects of past exclusion of students on the basis of sex, each educational institution to which § 86.16 applies shall include in its transition plan, and shall implement, specific steps designed to encourage individuals of the previously excluded sex to apply for admission to such institution. Such steps shall include instituting recruitment programs which emphasize the institution's commitment to enrolling students of the sex previously excluded.

(Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374; 20 U.S.C. 1681, 1682)

**§ 86.18–86.20 [Reserved]**

## Subpart C—Discrimination on the Basis of Sex in Admission and Recruitment Prohibited

**§ 86.21 Admission.**

(a) *General.* No person shall, on the basis of sex, be denied admission, or be subjected to discrimination in admission, by any recipient to which this subpart applies, except as provided in §§ 86.16 and 86.17.

(b) Specific prohibitions. (1) In determining whether a person satisfies any policy or criterion for admission, or in making any offer of admission, a recipient to which this Subpart applies shall not:

(i) Give preference to one person over another on the basis of sex, by ranking applicants separately on such basis, or otherwise;

(ii) Apply numerical limitations upon the number or proportion of persons of either sex who may be admitted; or

(iii) Otherwise treat one individual differently from another on the basis of sex.

(2) A recipient shall not administer or operate any test or other criterion for admission which has a disproportionately adverse effect on persons on the basis of sex unless the use of such test or criterion is shown to predict validly success in the education program or activity in question and alternative tests or criteria which do not have such a disproportionately adverse effect are shown to be unavailable.

(c) *Prohibitions relating to marital or parental status.* In determining whether a person satisfies any policy or criterion for admission, or in making any offer of admission, a recipient to which this subpart applies:

(1) Shall not apply any rule concerning the actual or potential parental, family, or marital status of a student or applicant which treats persons differently on the basis of sex;

(2) Shall not discriminate against or exclude any person on the basis of pregnancy, childbirth, termination of pregnancy, or recovery therefrom, or establish or follow any rule or practice which so discriminates or excludes;

(3) Shall treat disabilities related to pregnancy, childbirth, termination of pregnancy, or recovery therefrom in the same manner and under the same policies as any other temporary disability or physical condition; and

(4) Shall not make pre-admission inquiry as to the marital status of an applicant for admission, including whether such applicant is "Miss" or "Mrs." A recipient may make pre-admission inquiry as to the sex of an applicant for admission, but only if such inquiry is made equally of such applicants of both sexes and if the results of such inquiry are not used in connection with discrimination prohibited by this part.

(Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374; 20 U.S.C. 1681, 1682)

### § 86.22 Preference in admission.

A recipient to which this subpart applies shall not give preference to applicants for admission, on the basis of attendance at any educational institution or other school or entity which admits as students or predominantly members of one sex, if the giving of such preference has the effect of discriminating on the basis of sex in violation of this subpart.

(Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374; 20 U.S.C. 1681, 1682)

### § 86.23 Recruitment.

(a) *Nondiscriminatory recruitment.* A recipient to which this subpart applies shall not discriminate on the basis of sex in the recruitment and admission of students. A recipient may be required to undertake additional recruitment efforts for one sex as remedial action pursuant to § 86.3(a), and may choose to undertake such efforts as affirmative action pursuant to § 86.3(b).

(b) *Recruitment at certain institutions.* A recipient to which this subpart applies shall not recruit primarily or exclusively at educational institutions, schools or entities which admit as students only or predominantly members of one sex, if such actions have the effect of discriminating on the basis of sex in violation of this subpart.

(Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374; 20 U.S.C. 1681, 1682)

### §§ 86.24–86.30 [Reserved]

## Subpart D—Discrimination on the Basis of Sex in Education Programs and Activities Prohibited

### § 86.31 Education programs and activities.

(a) *General.* Except as provided elsewhere in this part, no person shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any academic, extracurricular, research, occupational training, or other education program or activity operated by a recipient which receives or benefits from Federal financial assistance. This subpart does not apply to actions of a recipient in connection with admission of its students to an education program or activity of (1) a recipient to which Subpart C does not apply, or (2) an entity, not a recipient, to which Subpart C would not apply if the entity were a recipient.

(b) *Specific prohibitions.* Except as provided in this subpart, in providing any aid, benefit, or service to a student, a recipient shall not, on the basis of sex:

(1) Treat one person differently from another in determining whether such person satisfies any requirement or condition for the provision of such aid, benefit, or service;

(2) Provide different aid, benefits, or services or provide aid, benefits, or services in a different manner;

(3) Deny any person any such aid, benefit, or service;

(4) Subject any person to separate or different rules of behavior, sanctions, or other treatment;

(5) Discriminate against any person in the application of any rules of appearance;

(6) Apply any rule concerning the domicile or residence of a student or applicant, including eligibility for in-state fees and tuition;

(7) Aid or perpetuate discrimination against any person by providing significant assistance to any agency, organization, or person which discriminates on the basis of sex in providing any aid, benefit or service to students or employees;

(8) Otherwise limit any person in the enjoyment of any right, privilege, advantage, or opportunity.

(c) *Assistance administered by a recipient educational institution to study at a foreign institution.* A recipient educational institution may administer or assist in the administration of scholarships, fellowships; or other awards established by foreign or domestic wills, trusts, or similar legal instruments, or by acts of foreign governments and restricted to members of one sex, which are designed to provide opportunities to study abroad, and which are awarded to students who are already matriculating at or who are graduates of the recipient institution; *Provided*, a recipient educational institution which administers or assists in the administration of such scholarships, fellowship, or other awards which are restricted to members of one sex provides, or otherwise makes available reasonable opportunities for similar studies for members of the other sex. Such opportunities may be derived from either domestic or foreign sources.

(d) *Programs not operated by recipient.* (1) This paragraph applies to any recipient which requires participation by any applicant, student, or employee in any education program or activity not operated wholly by such recipient, or which facilitates, permits, or considers such participation as part of or equivalent to an education program or activity operated by such recipient, including participation in educational consortia and cooperative employment and student-teaching assignments.

(2) Such recipient:

(i) Shall develop and implement a procedure designed to assure itself that the operator or sponsor of such other education program or activity takes no action affecting any applicant, student, or employee of such recipient which this part would prohibit such recipient from taking; and

(ii) Shall not facilitate, require, permit, or consider such participation if such action occurs.

(Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374; 20 U.S.C. 1681, 1682)

**§ 86.32 Housing.**

(a) *Generally.* A recipient shall not, on the basis of sex, apply different rules or regulations, impose different fees or requirements, or offer different services or benefits related to housing, except as provided in this section (including housing provided only to married students).

(b) *Housing provided by recipient.* (1) A recipient may provide separate housing on the basis of sex.

(2) Housing provided by a recipient to students of one sex, when compared to that provided to students of the other sex, shall be as a whole:

(i) Proportionate in quantity to the number of students of that sex applying for such housing; and

(ii) Comparable in quality and cost to the student.

(c) *Other housing.* (1) A recipient shall not, on the basis of sex, administer different policies or practices concerning occupancy by its students of housing other than provided by such recipient.

(2) A recipient which, through solicitation, listing, approval of housing, or otherwise, assists any agency, organization, or person in making housing available to any of its students, shall take such reasonable action as may be necessary to assure itself that such housing as is provided to students of one sex, when compared to that provided to students of the other sex, is as a whole: (i) Proportionate in quantity and (ii) comparable in quality and cost to the student. A recipient may render such assistance to any agency, organization, or person which provides all or part of such housing to students only of one sex.

(Secs. 901, 902, 907, Education Amendments of 1972, 86 Stat. 373, 374, 375; 20 U.S.C. 1681, 1682, 1686)

**§ 86.33 Comparable facilities.**

A recipient may provide separate toilet, locker room, and shower facilities on the basis of sex, but such facilities provided for students of one sex shall be comparable to such facilities provided for students of the other sex.

(Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374)

**§ 86.34 Access to course offerings.**

A recipient shall not provide any course or otherwise carry out any of its education program or activity separately on the basis of sex, or require or refuse participation therein by any of its students on such basis, including health, physical education, industrial, business, vocational, technical, home economics, music, and adult education courses.

(a) With respect to classes and activities in physical education at the elementary school level, the recipient shall comply fully with this section as expeditiously as possible but in no event later than one year from the effective date of this regulation. With respect to physical education classes and activities at the secondary and post-secondary levels, the recipient shall comply fully with this section as expeditiously as possible but in no event later than three years from the effective date of this regulation.

(b) This section does not prohibit grouping of students in physical education classes and activities by ability as assessed by objective standards of individual performance developed and applied without regard to sex.

(c) This section does not prohibit separation of students by sex within physical education classes or activities during participation in wrestling, boxing, rugby, ice hockey, football, basketball and other sports the purpose or major activity of which involves bodily contact.

(d) Where use of a single standard of measuring skill or progress in a physical education class has an adverse effect on members of one sex, the recipient shall use appropriate standards which do not have such effect.

(e) Portions of classes in elementary and secondary schools which deal exclusively with human sexuality may be conducted in separate sessions for boys and girls.

(f) Recipients may make requirements based on vocal range or quality which may result in a chorus or choruses of one or predominantly one sex.

(Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374; 20 U.S.C. 1681, 1682)

**§ 86.35 Access to schools operated by L.E.A.s.**

A recipient which is a local educational agency shall not, on the basis of sex, exclude any person from admission to:

(a) Any institution of vocational education operated by such recipient; or

(b) Any other school or educational unit operated by such recipient, unless such recipient otherwise makes available to such person, pursuant to the same policies and criteria of admission, courses, services, and facilities comparable to each course, service, and facility offered in or through such schools.

(Sections 901, 902, Education Amendments of 1972, 86 Stat. 373, 374; 20 U.S.C. 1681, 1682)

**§ 86.36 Counseling and use of appraisal and counseling materials.**

(a) *Counseling.* A recipient shall not discriminate against any person on the basis of sex in the counseling or guidance of students or applicants for admission.

(b) *Use of appraisal and counseling materials.* A recipient which uses testing or other materials for appraising or counseling students shall not use different materials for students on the basis of their sex or use materials which permit or require different treatment of students on such basis unless such different materials cover the same occupations and interest areas and the use of such different materials is shown to be essential to eliminate sex bias. Recipients shall develop and use internal procedures for ensuring that such materials do not discriminate on the basis of sex. Where the use of a counseling test or other instrument results in a substantially disproportionate number of members of one sex in any particular course of study or classification, the recipient shall take such action as is necessary to assure itself that such disproportion is not the result of discrimination in the instrument or its application.

(c) *Disproportion in classes.* Where a recipient finds that a particular class contains a substantially disproportionate number of individuals of one sex, the recipient shall take such action as is necessary to assure itself that such disproportion is not the result of discrimination on the basis of sex in counseling or appraisal materials or by counselors.

**§ 86.37 Financial assistance.**

(a) *General.* Except as provided in paragraphs (b) and (c) of this section, in providing financial assistance to any of its students, a recipient shall not: (1) On the basis of sex, provide different amount or types of such assistance, limit eligibility for such assistance which is of any particular type or source, apply different criteria, or otherwise discriminate; (2) through solicitation, listing, approval, provision of facilities or other services, assist any foundation, trust, agency, organization, or person which provides assistance to any of such recipient's students in a manner which discriminates on the basis of sex; or (3) apply any rule or assist in application of any rule concerning eligibility for such assistance which treats persons of one sex differently from persons of the other sex with regard to marital or parental status.

(b) *Financial aid established by certain legal instruments.* (1) a recipient may administer or assist in the administration of scholarships, fellowships, or other forms of financial assistance established pursuant to domestic or foreign wills, trusts, bequests, or similar legal instruments or by acts of a foreign government which requires that awards be made to members of a particular sex specified therein: *Provided*, that the overall effect of the award of such sex-restricted scholarships, fellowships, and other forms of financial assistance does not discriminate on the basis of sex.

(2) To ensure nondiscriminatory awards of assistance as required in subparagraph (b)(1) of this paragraph, recipients shall develop and use procedures under which:

(i) Students are selected for award of financial assistance on the basis of nondiscriminatory criteria and not on the basis of availability of funds restricted to members of a particular sex;

(ii) An appropriate sex-restricted scholarship, fellowship, or other form of financial assistance is allocated to each student selected under subparagraph (b)(2)(i) of this paragraph; and

(iii) No student is denied the award for which he or she was selected under subparagraph (b)(2)(i) of this paragraph because of the absence of a scholarship, fellowship, or other form of financial assistance designated for a member of that student's sex.

(c) *Athletic scholarships.* (1) To the extent that a recipient awards athletic scholarships or grants-in-aid, it must provide reasonable opportunities for such awards for members of each sex in proportion to the number of students of each sex participating in interscholastic or intercollegiate athletics.

(2) Separate athletic scholarships or grants-in-aid for members of each sex may be provided as part of separate athletic teams for members of each sex to the extent consistent with this paragraph and § 86.41 of this part.

(Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374; 20 U.S.C. 1681, 1682; and Sec. 844, Education Amendments of 1974, Pub. L. 93-380, 88 Stat. 484)

**§ 86.38 Employment assistance to students.**

(a) *Assistance by recipient in making available outside employment.* A recipient which assists any agency, organization or person in making employment available to any of its students:

(1) Shall assure itself that such employment is made available without discrimination on the basis of sex; and

(2) Shall not render such services to any agency, organization, or person which discriminates on the basis of sex in its employment practices.

(b) *Employment of students by recipients.* A recipient which employs any of its students shall not do so in a manner which violates Subpart E.

(Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374; 20 U.S.C. 1681, 1682)

**§ 86.39 Health and insurance benefits and services.**

In providing a medical, hospital, accident, or life insurance benefit, service, policy, or plan to any of its students, a recipient shall not discriminate on the basis of sex, or provide such benefit, service, policy, or plan in a manner which would violate Subpart E if it were provided to employees of the recipient. This section shall not prohibit a recipient from providing any benefit or service which may be used by a different proportion of students of one sex than of the other, including family planning services. However, any recipient which provides full coverage health service shall provide gynecological care.

(Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374; 20 U.S.C. 1681, 1682)

**§ 86.40 Marital or parental status.**

(a) *Status generally.* A recipient shall not apply any rule concerning a student's actual or potential parental, family, or marital status which treats students differently on the basis of sex.

(b) *Pregnancy and related conditions.* (1) A recipient shall not discriminate against any student, or exclude any student from its education program or activity, including any class or extracurricular activity, on the basis of such student's pregnancy, childbirth, false pregnancy, termination of pregnancy or recovery therefrom, unless the student requests voluntarily to participate in a separate portion of the program or activity of the recipient.

(2) A recipient may require such a student to obtain the certification of a physician that the student is physically and emotionally able to continue participation in the normal education program or activity so long as such a certification is required of all students for other physical or emotional conditions requiring the attention of a physician.

(3) A recipient which operates a portion of its education program or activity separately for pregnant students, admittance to which is completely voluntary on the part of the student as provided in paragraph (b) (1) of this section shall ensure that the instructional program in the separate program is comparable to that offered to non-pregnant students.

(4) A recipient shall treat pregnancy, childbirth, false pregnancy, termination of pregnancy and recovery therefrom in the same manner and under the same policies as any other temporary disability with respect to any medical or hospital benefit, service, plan or policy which such recipient administers, operates, offers, or participates in with respect to students admitted to the recipient's educational program or activity.

(5) In the case of a recipient which does not maintain a leave policy for its students, or in the case of a student who does not otherwise qualify for leave under such a policy, a recipient shall treat pregnancy, childbirth, false pregnancy, termination of pregnancy and recovery therefrom as a justification for a leave of absence for so long a period of time as is deemed medically necessary by the student's physician, at the conclusion of which the student shall be reinstated to the status which she held when the leave began.

(Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374; 20 U.S.C. 1681, 1682)

**§ 86.41 Athletics.**

(a) *General.* No person shall, on the basis of sex, be excluded from participation in, be denied the benefits of, be treated differently from another person or otherwise be discriminated against in any interscholastic, intercollegiate, club or intramural athletics offered by a recipient, and no recipient shall provide any such athletics separately on such basis.

(b) *Separate teams.* Notwithstanding the requirements of paragraph (a) of this section, a recipient may operate or sponsor separate teams for members of each sex where selection for such teams is based upon competitive skill or the activity involved is a contact sport. However, where a recipient operates or sponsors a team in a particular sport for members of one sex but operates or sponsors no such team for members of the other sex, and athletic opportunities for members of that sex have previously been limited, members of the excluded sex must be allowed to try-out for the team offered unless the sport involved is a contact sport. For the purposes of this part, contact sports include boxing, wrestling, rugby, ice hockey, football, basketball and other sports the purpose of major activity of which involves bodily contact.

(c) *Equal opportunity.* A recipient which operates or sponsors interscholastic, intercollegiate, club or intramural athletics shall provide equal athletic opportunity for members of both sexes. In determining whether equal opportunities are available the Director will consider, among other factors:

(i) Whether the selection of sports and levels of competition effectively accommodate the interests and abilities of members of both sexes;

(ii) The provision of equipment and supplies;

(iii) Scheduling of games and practice time;

(iv) Travel and per diem allowance;

(v) Opportunity to receive coaching and academic tutoring;

(vi) Assignment and compensation of coaches and tutors;

(vii) Provision of locker rooms, practice and competitive facilities;

(viii) Provision of medical and training facilities and services;

(ix) Provision of housing and dining facilities and services;

(x) Publicity.

Unequal aggregate expenditures for members of each sex or unequal expenditures for male and female teams if a recipient operates or sponsors separate teams will not constitute noncompliance with this section, but the Director may consider the failure to provide necessary funds for teams for one sex in assessing equality of opportunity for members of each sex.

(d) *Adjustment period.* A recipient which operates or sponsors interscholastic, intercollegiate, club or intramural athletics at the elementary school level shall comply fully with this section as expeditiously as possible but in no event later than one year from the effective date of this regulation. A recipient which operates or sponsors interscholastic, intercollegiate, club or intramural athletics at the secondary or post-secondary school level shall comply fully with this section as expeditiously as possible but in no event later than three years from the effective date of this regulation.

(Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374; 20 U.S.C. 1681, 1682; and Sec. 844, Education Amendments of 1974, Pub. L. 93-380, 88 Stat. 484)

**§ 86.42 Textbooks and curricular material.**

Nothing in this regulation shall be interpreted as requiring or prohibiting or abridging in any way the use of particular textbooks or curricular materials.

(Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374; 20 U.S.C. 1681, 1682)

**§ 86.43–86.50 [Reserved]**

**Subpart E—Discrimination on the Basis of Sex in Employment in Education Programs and Activities Prohibited**

**§ 86.51 Employment.**

(a) *General.* (1) No person shall, on the basis of sex, be excluded from partici-

pation in, be denied the benefits of, or be subjected to discrimination in employment, or recruitment, consideration, or selection therefor, whether full-time or part-time, under any education program or activity operated by a recipient which receives or benefits from Federal financial assistance.

(2) A recipient shall make all employment decisions in any education program or activity operated by such recipient in a nondiscriminatory manner and shall not limit, segregate, or classify applicants or employees in any way which could adversely affect any applicant's or employee's employment opportunities or status because of sex.

(3) A recipient shall not enter into any contractual or other relationship which directly or indirectly has the effect of subjecting employees or students to discrimination prohibited by this Subpart, including relationships with employment and referral agencies, with labor unions, and with organizations providing or administering fringe benefits to employees of the recipient.

(4) A recipient shall not grant preferences to applicants for employment on the basis of attendance at any educational institution or entity which admits as students only or predominantly members of one sex, if the giving of such preferences has the effect of discriminating on the basis of sex in violation of this part.

(b) *Application.* The provisions of this subpart apply to:

(1) Recruitment, advertising, and the process of application for employment;

(2) Hiring, upgrading, promotion, consideration for and award of tenure, demotion, transfer, layoff, termination, application of nepotism policies, right of return from layoff, and rehiring;

(3) Rates of pay or any other form of compensation, and changes in compensation;

(4) Job assignments, classifications and structure, including position descriptions, lines of progression, and seniority lists;

(5) The terms of any collective bargaining agreement;

(6) Granting and return from leaves of absence, leave for pregnancy, childbirth, false pregnancy, termination of pregnancy, leave for persons of either sex to care for children or dependents, or any other leave;

(7) Fringe benefits available by virtue of employment, whether or not administered by the recipient;

(8) Selection and financial support for training, including apprenticeship, professional meetings, conferences, and other related activities, selection for tuition assistance, selection for sabbaticals and leaves of absence to pursue training;

(9) Employer-sponsored activities, including social or recreational programs; and

(10) Any other term, condition, or privilege of employment.

(Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374; 20 U.S.C. 1681, 1682)

**§ 86.53 Employment criteria.**

A recipient shall not administer or operate any test or other criterion for any employment opportunity which has a disproportionately adverse effect on persons on the basis of sex unless:

(a) Use of such test or other criterion is shown to predict validly successful performance in the position in question; and

(b) Alternative tests or criteria for such purpose, which do not have such disproportionately adverse effect, are shown to be unavailable.

(Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374; 20 U.S.C. 1681, 1682)

**§ 86.53 Recruitment.**

(a) *Nondiscriminatory recruitment and hiring.* A recipient shall not discriminate on the basis of sex in the recruitment and hiring of employees. Where a recipient has been found to be presently discriminating on the basis of sex in the recruitment or hiring of employees, or has been found to have in the past so discriminated, the recipient shall recruit members of the sex so discriminated against so as to overcome the effects of such past or present discrimination.

(b) *Recruitment patterns.* A recipient shall not recruit primarily or exclusively at entities which furnish as applicants only or predominantly members of one sex if such actions have the effect of discriminating on the basis of sex in violation of this subpart.

(Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374; 20 U.S.C. 1681, 1682)

**§ 86.54 Compensation.**

A recipient shall not make or enforce any policy or practice which, on the basis of sex:

(a) Makes distinctions in rates of pay or other compensation;

(b) Results in the payment of wages to employees of one sex at a rate less than that paid to employees of the opposite sex for equal work on jobs the performance of which requires equal skill, effort, and responsibility, and which are performed under similar working conditions.

(Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374; 20 U.S.C. 1681, 1682)

**§ 86.55 Job classification and structure.**

A recipient shall not:

(a) Classify a job as being for males or for females;

(b) Maintain or establish separate lines of progression, seniority lists, career ladders, or tenure systems based on sex; or

(c) Maintain or establish separate lines of progression, seniority systems, career ladders, or tenure systems for similar jobs, position descriptions, or job requirements which classify persons on the basis of sex, unless sex is a bona-fide occupational qualification for the positions in question as set forth in § 86.61.

(Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374; 20 U.S.C. 1681, 1682)

**§ 86.56 Fringe benefits.**

(a) *"Fringe benefits" defined.* For purposes of this part, "fringe benefits" means: any medical, hospital, accident, life insurance or retirement benefit, service, policy or plan, any profit-sharing or bonus plan, leave, and any other benefit

or service of employment not subject to the provision of § 86.54.

(b) *Prohibitions.* A recipient shall not:

(1) Discriminate on the basis of sex with regard to making fringe benefits available to employees or make fringe benefits available to spouses, families, or dependents of employees differently upon the basis of the employee's sex;

(2) Administer, operate, offer, or participate in a fringe benefit plan which does not provide either for equal periodic benefits for members of each sex, or for equal contributions to the plan by such recipient for members of each sex; or

(3) Administer, operate, offer, or participate in a pension or retirement plan which establishes different optional or compulsory retirement ages based on sex or which otherwise discriminates in benefits on the basis of sex.

(Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374; 20 U.S.C. 1681, 1682)

**§ 86.57 Marital or parental status.**

(a) *General.* A recipient shall not apply any policy or take any employment action:

(1) Concerning the potential marital, parental, or family status of an employee or applicant for employment which treats persons differently on the basis of sex; or

(2) Which is based upon whether an employee or applicant for employment is the head of household or principal wage earner in such employee's or applicant's family unit.

(b) *Pregnancy.* A recipient shall not discriminate against or exclude from employment any employee or applicant for employment on the basis of pregnancy, childbirth, false pregnancy, termination of pregnancy, or recovery therefrom.

(c) *Pregnancy as a temporary disability.* A recipient shall treat pregnancy, childbirth, false pregnancy, termination of pregnancy, and recovery therefrom and any temporary disability resulting therefrom as any other temporary disability for all job related purposes, including commencement, duration and extensions of leave, payment of disability income, accrual of seniority and any other benefit or service, and reinstatement, and under any fringe benefit offered to employees by virtue of employment.

(d) *Pregnancy leave.* In the case of a recipient which does not maintain a leave policy for its employees, or in the case of an employee with insufficient leave or accrued employment time to qualify for leave under such a policy, a recipient shall treat pregnancy, childbirth, false pregnancy, termination of pregnancy and recovery therefrom as a justification for a leave of absence without pay for a reasonable period of time, at the conclusion of which the employee shall be reinstated to the status which she held when the leave began or to a comparable position, without decrease in rate of compensation or loss of promotional opportunities, or any other right or privilege of employment.

(Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374; 20 U.S.C. 1681, 1682)

**§ 86.58 Effect of State or local law or other requirements.**

(a) *Prohibitory requirements.* The obligation to comply with this subpart is not obviated or alleviated by the existence of any State or local law or other requirement which imposes prohibitions or limits upon employment of members of one sex which are not imposed upon members of the other sex.

(b) *Benefits.* A recipient which provides any compensation, service, or benefit to members of one sex pursuant to a State or local law or other requirement shall provide the same compensation, service, or benefit to members of the other sex.

(Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374; 20 U.S.C. 1681, 1682)

**§ 86.59 Advertising.**

A recipient shall not in any advertising related to employment indicate preference, limitation, specification, or discrimination based on sex unless sex is a *bona-fide* occupational qualification for the particular job in question.

(Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374; 20 U.S.C. 1681, 1682)

**§ 86.60 Pre-employment inquiries.**

(a) *Marital status.* A recipient shall not make pre-employment inquiry as to the marital status of an applicant for employment, including whether such applicant is "Miss or Mrs."

(b) *Sex.* A recipient may make pre-employment inquiry as to the sex of an applicant for employment, but only if such inquiry is made equally of such applicants of both sexes and if the results of such inquiry are not used in connection with discrimination prohibited by this part.

(Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374; 20 U.S.C. 1681, 1682)

**§ 86.61 Sex as a bona-fide occupational qualification.**

A recipient may take action otherwise prohibited by this subpart provided it is shown that sex is a bona-fide occupational qualification for that action, such that consideration of sex with regard to such action is essential to successful operation of the employment function concerned. A recipient shall not take action pursuant to this section which is based upon alleged comparative employment characteristics or stereotyped characterizations of one or the other sex, or upon preference based on sex of the recipient, employees, students, or other persons, but nothing contained in this section shall prevent a recipient from considering an employee's sex in relation to employment in a locker room or toilet facility used only by members of one sex.

(Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374; 20 U.S.C. 1681, 1682)

**§§ 86.62–86.70 [Reserved]**

**Subpart F—Procedures [Interim]**

**§ 86.71 Interim procedures.**

For the purposes of implementing this part during the period between its effec-

tive date and the final issuance by the Department of a consolidated procedural regulation applicable to title IX and other civil rights authorities administered by the Department, the procedural provisions applicable to title VI of the Civil Rights Act of 1964 are hereby adopted and incorporated herein by reference. These procedures may be found at 45 CFR §§ 80-6—80-11 and 45 CFR Part 81.

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